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Report of the Internal Justice Council

Summary

The 2018 report of the Internal Justice Council takes into account the relevant resolutions of the General Assembly and draws from extensive consultations with stakeholders in the internal justice system.

The Council puts forward the following recommendations:

(a) With regard to staff access to documentation and information at the management evaluation stage, management should make full disclosure to the applicant of all relevant, non-privileged documentary and other information at that stage;

(b) With regard to protection from retaliation, staff litigation against management before the Tribunals should be regarded as a protected activity, staff litigants and all witnesses should be accorded protection by the Ethics Office and the Tribunals should also have the authority to make orders for their protection;

(c) In respect of the issue of self-representation before the Tribunals, the Office of Staff Legal Assistance must be given adequate funding to meet its responsibilities, and the Office and staff associations should train volunteer advocates, including retirees, to represent claimants whom the Office has declined to represent;

(d) In respect of referrals for accountability from the Tribunals, the Secretary-General should take prompt and appropriate action on such referrals and relay information to the Tribunals on which actions have been taken and which have been considered and not taken. The Secretary-General should also include an anonymized summary of the cases in the annual information circular entitled "Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour";

(e) In respect of action to promote the independence of the Tribunals, the Dispute Tribunal and its chambers should be relocated to an appropriate location in the Headquarters complex, and the General Assembly should request the Secretary-General to propose a separate, stand-alone classification for compensation purposes for Dispute Tribunal judges that would not be tied to any staff classification;

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(f) In respect of judicial and administrative efficiency, judges should hold an early conference on case management with the parties, which can be conducted by teleconference or videoconference; the President of the Dispute Tribunal should consider developing a case disposal plan; the Principal Registrar should establish a dashboard showing the real-time status of all cases; the Tribunal should seek input from the Principal Registrar and other Registrars before finalizing its document, entitled "Judicial directions"; the President of the Tribunal should exercise greater administrative responsibility for the workings of the Tribunal, consistent with the principles of judicial independence and accountability; the statute of the Tribunal should be amended to provide that the President is to be selected from among the full-time judges and should be limited to a two-year term;

(g) In respect of the adequacy of resources for the Office of Staff Legal Assistance, it should be allocated sufficient funds to meet its responsibilities, as set out in Article 17 of the Charter of the United Nations;

(h) In respect of rescission or specific performance as a remedy for wrongful dismissal, management is obligated to consider in good faith the practicability of reinstatement, or instatement to a comparable open position, and to show to the Tribunal's satisfaction that a good-faith effort has been made. If the Tribunal is not satisfied with management's efforts, the Tribunal should consider whether payment in lieu of reinstatement or instatement may exceed the two-year cap in appropriate cases;

(i) In respect of the standing of staff associations before the Dispute Tribunal, the statute of the Tribunal should be amended to recognize the standing of such groups to file applications claiming violations of their institutional interests, such as claims of interference with the right of association of staff;

(j) In respect of the joinder of similar claims before the Dispute Tribunal, the Tribunal should encourage, in appropriate cases, joint submission of similar claims, and the Registrars and the Office of Staff Legal Assistance should help to facilitate such applications;

(k) In respect of investigation and disciplinary matters, including in relation to accusations of sexual harassment, the Secretary-General should further strengthen the Organization's capacity for a reasonably prompt, professional investigation of claims of sexual harassment and other misconduct and should implement a streamlined, comprehensive procedure to receive, process and address such complaints.

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I. Preliminary remarks

1. The General Assembly established the Internal Justice Council by its resolution 62/228 to ensure independence, professionalism and accountability in the system of administration of justice.

2. The General Assembly established the internal system of justice of the United Nations as an independent, transparent, professionalized, adequately resourced and decentralized system operating consistently with the relevant rules of international law and the principles of the rule of law and due process in order to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike (resolution 61/261), and tasked the Council to provide its views to the Assembly on the implementation of the system of administration of justice (resolution 62/228).

3. A fundamental consideration that guides the Council is that, in order for the internal system of administration of justice to produce fair results for staff and management, and be so perceived, the judges of the Tribunals must enjoy complete decisional autonomy, without interference from management in the exercise of their judicial role.

4. In compiling the present report, the Council has been guided by prior resolutions of the General Assembly and its interviews with the various stakeholders in the internal justice system. Its focus included consideration of the following principles: the independence and autonomy of the Tribunals, access to information by staff and their representatives and other concerns of due process, protection against retaliation for parties and witnesses, and accountability for wrongdoing. An overall consideration is effectiveness: does the system provide an adequate framework and sufficient resources to meet its challenges, and what changes are required to ensure that the various components of the system perform their roles effectively?

5. The views of the United Nations Appeals Tribunal and of the United Nations Dispute Tribunal are annexed to the present report, in line with paragraph 45 of General Assembly resolution 71/266.

6. The current members of the Council, whose terms of office are effective until 12 November 2020, are Yvonne Mokgoro (South Africa), Chair; Carmen Artigas (Uruguay), external jurist nominated by staff; Samuel Estreicher (United States of America), external jurist nominated by management; Frank Eppert (United States of America), member nominated by management; and Jamshid Gaziyev (Uzbekistan), member nominated by staff.

7. As outlined below, the Council held meetings, in person and by videoconference, with stakeholders in New York from 9 to 18 May 2018. In view of existing vacant judicial positions, the Council simultaneously conducted an extensive recruitment exercise, which included administering an examination to eligible candidates for open positions in the Tribunals, and conducting in-person interviews with short-listed candidates in The Hague, the Netherlands, from 25 to 28 June 2018. The Council then produced the present report, as well as a separate recruitment report, which are both before the General Assembly for its consideration at its seventy-third session.

8. In its report of 2017 (A/72/210, sect. D, paras. 70–73), the Council expressed its concern that work-related friction existed between some Dispute Tribunal judges and some registry staff. Since issuing that report, the Council has learned that additional friction has arisen between the Office of Administration of Justice and the Tribunal. The Council therefore proposed that it was necessary to discuss the friction with the concerned parties. Accordingly, it met separately on this issue with the Tribunal judges, the Executive Director of the Office of Administration of Justice, the

Principal Registrar and the Registrars. The Council thereafter held a joint meeting with all the parties for the purpose of facilitating a structured dialogue geared towards improving the situation. The Council's early impression is that its efforts in this respect have borne some fruit; time will tell if additional attention has to be given to the matter. Some of the recommendations set forth below are drawn from discussions at the aforementioned meetings.

9. The Council agreed to address certain topics in the present report, with an emphasis on specific recommendations, taking into account the principles on which the United Nations internal system of justice was established: independence, transparency, professionalism, decentralization and accountability. The Council held in-person meetings in New York and videoconferences with parties in Geneva and Nairobi and with various entities within the system of administration of justice. The meetings included the judges of the two Tribunals, management staff of the Office of Staff Legal Assistance, the Ethics Office, the Office of the United Nations Ombudsman and Mediation Services, the Investigations Division of the Office of Internal Oversight Services and representatives of staff and management from the United Nations system. All were invited to raise concerns and matters of interest, including their views on a number of important topics, such as the equal access to documentation and information of both parties before the Management Evaluation Unit; protection from retaliation; investigations in disciplinary proceedings, including cases involving charges of sexual harassment; referrals for accountability by the Tribunals; and the independence and efficiency of the Tribunals. In addition, specific and follow-up queries were directed to stakeholders on issues that had been raised at the May 2017 meetings and in the course of preparing the Council's report of 2017.

10. The Council notes that, while some general matters of concern were shared by a great number of stakeholders, others were raised or indicated as problematic only by particular groups or individuals. Therefore, in the present report, matters of general concern will be identified first, followed by those that have been prioritized or raised on a more limited basis by some stakeholders.

II. Recommendations

A. Staff access to documentation and information at the management evaluation stage

Recommendation 1

To promote earlier resolution of cases at the management evaluation stage and avoid the cost of litigation, and in fairness to applicants before the Tribunals, the Council recommends that management be required to make full disclosure of all non-privileged documentary and other relevant information in its possession or control at the management evaluation stage.

11. During the Council's consultations with the judges, concerns were raised that the failure of management to make the aforementioned disclosure is unfair to applicants and hinders early resolution of disputes. It is the Council's view that management is obligated to make full disclosure of such information at the management evaluation stage in order to advance the critical objectives of the internal justice system and ensure its efficacy.

B. Protection from retaliation

Recommendation 2

The Council recommends that staff litigation against management before the Tribunals be regarded as a "protected activity" and that staff engaged in litigation, together with all witnesses in such cases, be accorded protection by the Ethics Office.

12. In its report of 2017 (ibid., paras. 21–32), the Council expressed its concern regarding retaliation by managers against staff who litigate against management or serve as witnesses before the Tribunals. Regrettably, the Council has heard from some stakeholders that instances of retaliation have continued. The Council also notes that, under article 6, paragraph (d), of the code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, judges have a duty to protect witnesses and parties from harassment and bullying during Tribunal proceedings. At the same time, managers have an obligation to refrain from, and protect staff against, retaliation. Retaliation against litigants and witnesses amounts to an abuse of authority, which constitutes misconduct that must be addressed and sanctioned, in line with relevant staff rules and regulations.

13. When the Tribunals have reason to believe that litigating staff or their witnesses are at risk of being retaliated against, they have the authority to issue orders for their protection. Failure to comply with such orders calls for contempt proceedings against the responsible manager, and engages the Secretary-General's responsibility to ensure implementation of the orders. In this connection, and, as recommended previously by the Council (ibid., para. 33), there is a need to establish an explicit system-wide policy protecting parties and witnesses from retaliation. It is the Council's view that the Ethics Office should be expressly mandated to implement this policy, including ensuring compliance with Tribunal orders of protection, and that the existing administrative issuances and Secretary-General's bulletins on the subject should be amended to provide for and eliminate any current protection gaps for dealing with instances of retaliation against litigants or their witnesses.

C. Addressing the issue of self-representation

Recommendation 3

The Office of Staff Legal Assistance must be given adequate funding to meet its responsibilities (see sect. H below). In addition, the Office and staff associations should help to train volunteer advocates, including retirees, to represent claimants whom the Office has declined to represent and to facilitate self-representation, as requested by staff. Staff engaging in such training and representation should be recognized and given appropriate release time.

14. Applicants have a right to represent themselves, but it is often not in their best interest to do so. Self-representation also presents a continuing challenge to the administration of the system of internal justice. It is a common concern of judges and practitioners alike that self-representation is not conducive to judicial efficiency. In this connection, the Council considers that some, if not many, of the self-represented cases are attributable to the Office of Staff Legal Assistance not being able to handle all cases coming its way for lack of resources.

D. Referrals for accountability from the Tribunals

Recommendation 4

The Secretary-General should take prompt and appropriate action in cases in which managers or other employees have been referred by the Tribunals for accountability, and relay general information to the Tribunals on the actions that have been taken. In addition, the Secretary-General should include a separate section, entitled "Referrals for accountability by United Nations Tribunals", together with a summary of anonymized cases, in the annual information circular entitled "Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour".

15. The Council has repeatedly underlined the importance of follow-up measures to the cases referred by the Tribunals for accountability,[1] which is an essential part of the General Assembly's broader expectation that the Secretary-General will ensure real and effective accountability in the Organization (see resolutions 61/261, 63/253 and 68/264).

16. All staff, including senior managers, are expected to operate within an established legal framework presided over by an independent and professional judiciary. The statutes of the Dispute Tribunal and the Appeals Tribunal, in articles 10.8 and 9.5, respectively, provide that judges may refer appropriate cases to the Secretary-General or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.

17. The Secretary-General has informed the General Assembly that the total number of cases referred to the Secretary-General, in addition to those vacated on appeal, was 14 at the end of November 2017. Notwithstanding reassurances that all referrals have been under active consideration or acted upon, the Council has heard repeated concerns expressed by interlocutors about a lack of information, in particular among staff, on the type of administrative measures taken or considered and not taken in those cases and why. The Council understands that letters by judges seeking feedback from the Secretary-General remain unanswered, and that staff at large have no inkling whether there was any follow-up to those cases, given the absence of publicly available information. The Council recommends that the Secretary-General relay general information to the Tribunals on the actions taken or considered and not taken with regard to the referrals, and that a separate section, entitled "Referrals for accountability by United Nations Tribunals", together with a summary of anonymized cases, be included in the annual information circular entitled "Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour".

E. Action to further promote the independence of the Tribunals

Recommendation 5

In order to further promote the independence and accessibility of the United Nations Dispute Tribunal, and how it is perceived by staff, the Tribunal and its chambers in New York should be relocated to an appropriate location in the Headquarters complex.

18. The Council agrees with the Tribunal judges that the Tribunal and its chambers in New York should be relocated. As noted in the Council's report of 2017 (see A/72/210, para. 59), the current arrangements give rise to an appearance that the Dispute Tribunal judges are not fully autonomous in respect of their judicial

[1] See, for example, A/71/158, paras. 160–167), and A/72/210, paras. 39–49.

functions, but, rather, are part of the Office of Administration of Justice and fall under its Executive Director's authority. The judges currently share space not only with the Office, but also with a unit of the Department of Political Affairs. Having a more appropriate location in the Headquarters complex would further promote the appearance of Tribunal independence.

Recommendation 6

A further measure that would help to ensure judicial independence, and the appearance thereof, is that the General Assembly request the Secretary-General to propose a revised compensation package for the Dispute Tribunal judges. The current package provides that judges are paid at a level equivalent to D-2, step IV, at the United Nations. The Council recommends a separate, stand-alone classification for the compensation package of Dispute Tribunal judges.

19. This would be a change in nomenclature only and would not result in a diminution or increase in the current level of compensation for Dispute Tribunal judges. The change would help to negate the ill-informed impression that judges are staff members and are therefore subject to the Secretary-General's direction or supervision in carrying out their judicial functions. It would also serve to highlight the Tribunal's judicial autonomy from the executive branch.

F. Judicial and operational efficiency

Recommendation 7

Judges should hold a case management conference with the parties, which can also be held through teleconference or videoconference, within a month of the filing of the responsive pleading, unless the parties otherwise agree.

Recommendation 8

In order to manage the backlog of cases that has recently arisen, the President of the Dispute Tribunal should consider developing and monitoring a case disposal plan.

20. Numerous interlocutors have informed the Council that, over the past year or so, there has been a noticeable reduction in the number of judgments that have been issued. In addition, long periods of time pass in many pending cases before any judicial action is taken at all. The Dispute Tribunal judges have explained that their operations have been adversely affected by the long process of recruiting a Registrar at the P-5 level in New York. It has also been suggested that case dispositions, which would include settlements or other dismissals not warranting an opinion, are a better indicator of judicial efficiency than the number of judgments issued.

21. While noting the issues outlined above, the Council is nevertheless convinced that a more proactive approach is needed. In expressing its opinion in this regard, the Council relied not only on oral statements made by its interlocutors, but also on data that it had requested from the Registries. The data, which took some time to compile (see recommendation 10 below), show a significant reduction in both the number of Dispute Tribunal judgments issued (100 in 2017, compared with 221 in 2016) and the number of orders issued (758 in 2017, compared with 1,036 in 2016). The data also show many cases in which no judicial action had been taken by Tribunal judges for extended periods of time, including a few cases that exceeded two years. Accordingly, the Council recommends that the President of the Tribunal, making use of the Principal Registrar and his or her staff, develop and implement a case disposal plan to manage the backlog of cases. Such a plan would appear to be of some urgency,

given the expected increase in cases mentioned by several of the interlocutors, the result of upcoming reforms and downsizing exercises at the United Nations.

Recommendation 9

To assist the judges in their work, the Principal Registrar, assisted by the Registrars, should establish a dashboard showing the real-time status of cases.

22. Currently, each of the Registrars maintains a separate database showing case status. The separate databases do not readily facilitate the Presidents of the two Tribunals discharging their monitoring responsibilities, under the statutes, to ensure the efficient functioning of their respective Tribunals. The establishment of a real-time dashboard, an information technology tool containing up-to-date data on case status, would permit such monitoring and also provide individual judges with standardized capacity to manage case disposal. The Council suggests that a dashboard be made available to provide information to applicants, counsel and, to the extent determined collaboratively by the Presidents of the Tribunals and the Principal Registrar, the public. The establishment of a dashboard would support both professionalism in operations and transparency.

Recommendation 10

The Council suggests that the Dispute Tribunal seek input from the Principal Registrar and the other Registrars before finalizing its document entitled "Judicial directions".

23. In November 2017, the Dispute Tribunal issued judicial directions to the Registries regarding operations. While the Council is in complete agreement with the Tribunal on the usefulness of judicial rules, as well as its general authority to promulgate them for the conduct of its cases, the Tribunal may find it useful to obtain input on the directions from the Principal Registrar and the Tribunal Registrars prior to issuing the instruments. The Registry staff, who serve all of the judges, are well placed to assist in this respect and have called the attention of the Tribunal to possible inconsistencies in the directions. The Council believes that consultations and, indeed, collaboration in such matters would improve operational efficiency and the overall work environment. It may also be worthwhile for the Tribunal to solicit the views of the attorneys who practise regularly before the Tribunals when considering the issuance of judicial directions.

Recommendation 11

The Council urges the President of the Dispute Tribunal to exercise greater administrative responsibility in the light of the persistent difficulties that judges on the Tribunal have had in meeting their responsibilities, under article 7 (b) of the code of conduct for the judges of the Tribunals, to give judgment or rulings promptly and no later than three months from the end of hearings or the close of pleadings. The President has this authority under article 7 (c) to (f) of the code of conduct, but, judging from the separate yet consistent comments of the Council's interlocutors, the authority is not being fully exercised. Moreover, there have been various failures of coordination between the Dispute Tribunal and the Principal Registrar.

24. Consistent with the principles of judicial independence and accountability, the President is responsible for ensuring the overall efficiency of the Dispute Tribunal, including ensuring the adherence of the judges to the code of conduct; resolving work-related issues between the judges and staff and Registrars; maintaining regular work hours; coordinating regularly with the Principal Registrar on services provided to the Tribunal and its budgetary and personnel needs; regularly monitoring the case

management records and procedures of the judges, including with regard to the ageing of cases; maintaining up-to-date and sufficiently detailed rules of procedure, pleadings and evidence, as the Tribunal considers necessary; and meeting regularly with the President of the Appeals Tribunal to discuss, as necessary, issues pertaining to the consistent application of Appeals Tribunal jurisprudence. The Council is of the firm view that these responsibilities are within the ambit of the President's duty to ensure the necessary operational efficiency in the Dispute Tribunal.

Recommendation 12

In the interest of promoting continuity and building up institutional memory, the Council recommends that the General Assembly amend the statute of the Dispute Tribunal to provide that the President of the Tribunal shall sit for a two-year term. The proposed text for such an amendment is set forth below for the consideration of the Assembly.

> **Article 4.7 is amended to add the words "from among the full-time judges who shall sit for a two-year term, and" after the word "President".**

G. Consultations with the Office of Administration of Justice on budgets

Recommendation 13

The Council recommends that the Executive Director of the Office of Administration of Justice consult with the President of the Dispute Tribunal, the President of the Appeals Tribunal and the Office of Staff Legal Assistance on their respective budgets.

25. As noted in the Council's report of 2017 (see A/72/210, paras. 62–63), the Executive Director of the Office of Administration of Justice is responsible for soliciting budget requirements and preparing budget submissions for all of the functions that the Office supports or manages. The Council notes that the current budget is in effect until the end of 2019, and hopes that the budget process in future years will include due consultation with the affected stakeholders.

H. Adequacy of resources for the Office of Staff Legal Assistance

Recommendation 14

Cognizant of Article 17 of the Charter of the United Nations, in which it is stated that the expenses of the Organization shall be borne by the Members as apportioned by the General Assembly, the Council recommends that the Office of Staff Legal Assistance be allocated sufficient funds by the Assembly to meet its responsibilities. Failure to do so is probably in contravention of the Charter, would be viewed sceptically by the staff at large and would not reflect well on the United Nations, given that it would undercut its own efforts to promote the rule of law throughout the world.

26. The Office of Staff Legal Assistance was established by the General Assembly as an integral component of the internal system of administration of justice of the United Nations. It is one of the key elements for ensuring meaningful access to justice, and the Office is to be commended for its provision of legal assistance to staff, whether they can afford a lawyer or not. Nevertheless, the high rate of self-representation in the Tribunals, coupled with the Council's discussions with interlocutors, suggests that the Office does not have the resources to represent all staff having meritorious claims (see recommendation 3 above).

27. The Office of Staff Legal Assistance provides independent, professional and confidential legal advice and representation to staff in relation to their employment. In particular, it offers a wide range of legal services, including advice and representation during informal resolution of disputes and the mediation process; assistance with the management evaluation review and during the disciplinary process; and legal representation before the two Tribunals.

28. Moreover, the Office of Staff Legal Assistance serves a very substantial filtering function, helping to reduce demand on the formal adjudication system by advising staff on the merits of their cases and proposing alternatives to litigation, such as mediation. For example, in 2016, 57 per cent of the requests for legal assistance received by the Office were settled or otherwise disposed of, thereby avoiding many formal proceedings.

29. Nearly all stakeholders interviewed by the Council conveyed their confidence in the professionalism of Office of Staff Legal Assistance personnel and mentioned the importance of its role in the overall administration of justice, noting that staff interests are well represented by the Office and that the overall system benefits from its legal assistance to applicants.

30. The Council believes that, because of budgetary constraints, the Office of Staff Legal Assistance is not in a position to assist applicants in all cases. The Council's impression corresponds to the conclusion of the Interim Independent Assessment Panel: that the Office is under-resourced and that its budget is insufficient, even if supplemented by the voluntary supplemental funding mechanism. The situation is bound to become even more critical owing to a number of downsizing exercises and large-scale reforms in the Organization, such as management reform and the global service delivery model. In sum, the function of the Office represents substantial value for money, and it is the Council's considered opinion that it could yield even greater value if its budget support needs were fully met by Member States.

I. Rescission or specific performance as a remedy

Recommendation 15

Before the Dispute Tribunal issues a final decision in a case of wrongful termination or non-renewal of a fixed-term contract, management should provide a statement of the reasons why reinstatement was not feasible in the particular case. If management does not provide the statement within a reasonable amount of time, or if the Tribunal does not believe that management has acted reasonably in exploring the feasibility of reinstatement, or instatement to a comparable vacant position, the Tribunal should consider this to be a factor in deciding whether payment in lieu of reinstatement or instatement may exceed the two-year cap in appropriate cases.

31. Under the statute of the Dispute Tribunal, when staff are found to have been unlawfully terminated, management is given the choice of reinstatement or rescission, or payment in lieu thereof of an amount normally not exceeding two years of base salary. Management has uniformly opted for the payment option. Management's representatives could not identify a single case in which the option to pay compensation had not been chosen. As noted previously by the Council (A/72/210, paras. 80–83), the "no rescission/no reinstatement" approach has probably existed for decades, predating the establishment of the current administration of justice system, in 2009.

32. The Council recognizes that, although reinstatement, or rescission, may not be practicable or desirable for operational reasons in some cases, it is unlikely to be

impracticable in all cases. In the Council's view, management is obligated to consider in good faith the practicability of reinstatement, or instatement to a comparable open position, and to show to the Tribunal's satisfaction that it has made a good-faith effort. In this respect, the Council notes the well-expressed view of the Dispute Tribunal on the issue that the whole system of justice is put at risk by the attitude of management to systematically opt for payment in lieu of rescission (see UNDT/2016/204, para. 106).

J. Standing of staff associations

Recommendation 16

Staff associations and unions should be recognized as having the legal standing to file actions in the Dispute Tribunal regarding their institutional interests, such as claims of interference with the exercise of the rights of association of their members. The Council recommends that the General Assembly amend the statute of the Tribunal in the interest of recognizing such standing of staff associations and unions. The proposed text for such an amendment is set forth below for the consideration of the Assembly.

> **Article 2.1 is amended to add subsection (d), as follows:**
>
> **(d) In addition, staff associations and unions may bring applications before the Dispute Tribunal against the Secretary-General regarding claimed violations of their institutional interests, such as claims regarding interference with the exercise of the rights of association.**

33. During current and past discussions with staff unions and associations, the Council was informed of their concern that they are unable to file applications on their own behalf in the Dispute Tribunal regarding interference with their institutional interests, such as claims of interference with the exercise of rights of association of their members. In the Council's meetings with the judges and management, the Council heard no suggestion that this limited form of associational standing would create operational difficulties.

34. The Council recommends that the General Assembly consider the issue of the standing of staff associations to file applications in the Dispute Tribunal, upholding their members' rights to freedom of association, as recognized in staff rule 8.1 (g). If the statute of the Tribunal needs to be amended so that such standing is recognized, the Council recommends such an amendment, in the form presented above.

K. Joinder of similar claims

Recommendation 17

The Council recommends that the Dispute Tribunal encourage, in appropriate cases, joint submission of similar claims and that the Registrars and the Office of Staff Legal Assistance facilitate such applications. Staff unions and associations may provide valuable support to staff members in this regard.

35. The Dispute Tribunal has permitted joinder of similar claims in some cases. The Council encourages the regularization of the practice and the simplification of the processing of such claims for the sake of judicial efficiency.

36. Joint submissions should result in greater consistency in the application of rules and regulations, and reduce the incidence of unfair outcomes in which similarly situated staff are treated differently because they had not previously filed a claim in

the Tribunal. Joinder of similar submissions would also reduce the administrative burden on the system caused by multiple applications in which the same issues are raised.

37. The Council also recommends that the Dispute Tribunal, working in consultation with the Principal Registrar, consider whether its rules of procedure need to be amended to facilitate submission of joint claims.

L. Investigation and disciplinary matters, including in relation to sexual harassment

Recommendation 18

The Secretary-General should further strengthen the capacity of the United Nations to conduct reasonably prompt, professional investigation of claims of sexual harassment, and implement a streamlined, comprehensive procedure to receive, process and address complaints. The Organization should put in place procedures to ensure due process rights of the alleged victims and the accused, as well as to ensure the confidentiality of their information, and to ensure that complainants and witnesses are effectively protected against retaliation.

38. In its consultations with stakeholders, the Council has heard many anecdotes about the pervasive harassment and abuse of authority, including sexual harassment, in the workplace. In February 2018, the Secretary-General reiterated his commitment to zero tolerance of sexual harassment by sending a message to staff to underscore his commitment to encouraging and enabling staff to report sexual harassment in the workplace, and to support victims and witnesses. The "Speak up" helpline was set up and made operational as a resource which will allow Secretariat personnel to speak confidentially with an impartial and trained individual who can provide information on mechanisms for reporting, protection and support. The Investigations Division of the Office of Internal Oversight Services was tasked to investigate all complaints of sexual harassment and to implement a streamlined, fast-tracked procedure to receive, process and address complaints.

39. The Council strongly supports the efforts of the Secretary-General to combat and stamp out sexual harassment. The Council has been informed, however, that investigation by the Office of Internal Oversight Services takes, on average, 12 months. Tribunal cases may be an indication of concerns about due process and the quality of those investigations. There are further concerns about issues relating to burden of proof, retaliation against those who report sexual harassment, confidentiality of the information provided by the alleged victim and the accused, and sanctioning of individuals who have been found guilty of wrongdoing. The Council has also heard concerns about the complexity, length and high volume of cases in the field, indicating the preference of some stakeholders that disciplinary procedures there be centralized. Because the quality of fact-finding directly affects the outcome of a case, it is important that the Tribunals use their discretionary authority to craft effective remedial orders, to ensure compliance with all procedures, including investigations.

40. The Council has also understood from its interlocutors that there is generally insufficient knowledge and understanding of how sexual harassment manifests itself in the workplace, in particular given its close relationship with harassment and abuse of authority. The Council encourages greater dissemination of clear and accessible information on sexual harassment and more sensitivity training for managers and staff, paying particular attention to staff who may be more vulnerable to sexual harassment owing to their distant and isolated locations.

41. The United Nations should show leadership by acting decisively against the incidence of sexual harassment within its own ranks. The reporting, protection and support procedures at the Organization must demonstrate the seriousness with which the need to eradicate and prevent sexual harassment is regarded. Reporting sexual harassment must not be viewed as an action bringing the Organization into disrepute, as staff have complained during the consultation process. Rather, it must be regarded as the first and most critical step to take in addressing sexual harassment in the workplace. Accused individuals should be accorded all due process rights. If they are found to be guilty, however, decisive action must be taken, and be seen to be taken, so that perpetrators in the workplace are never perceived to be acting with impunity.

42. The Council understands that there are number of pending changes to the legal framework governing the issues relating to investigations, the disciplinary process and sexual harassment. The Secretary-General's Bulletin on, among other things, sexual harassment (ST/SGB/2008/5) is under review, with a view to ensuring that it reflects the recent actions and intentions of the Secretary-General. The current administrative instruction on unsatisfactory conduct, investigations and the disciplinary process (ST/AI/2017/1) may be also amended further, one year after its implementation. Furthermore, the management reform proposed by the Secretary-General to the General Assembly will change the organizational structure of the Department of Management and the Department of Field Support. The Council will pay close attention to the changes and, in the meantime, encourages management to consult closely with the staff at large on these important matters and ensure that sexual harassment concerns are dealt with in a comprehensive manner, bearing in mind broader concerns about due process and abuse of authority.

III. Additional matters

43. In its report of 2017, the Council noted its need for more comprehensive terms of reference that detail the legal and administrative framework governing its work (see A/72/210, para. 6). The Council was unable to fully consider the matter during its recent session and will address it in a future report.

44. In its resolution 72/256, the General Assembly noted that staff, in particular those serving in field missions and offices, still appear to have limited awareness of the system of administration of justice. Numerous interlocutors cited the same issue to the Council, in particular those who are locally employed by the Organization. Taking into account the foregoing, and noting also the efficiency-related benefits that will inure to the operations of the internal justice system when staff better understand their rights and obligations, the Assembly should request the Secretary-General to establish an outreach task force from among entities with a strong field presence, such as the Department of Field Support, to work collaboratively with Headquarters and local staff associations and unions to effectively address the Assembly's expressly noted need for the improvement of staff knowledge and understanding. The establishment of such a task force would also address the emphasis that the Assembly has placed on access to the system of administration of justice that staff at all duty stations should have (see resolutions 71/266, para. 12, and 66/237, para. 12).

45. The Council notes the General Assembly's request that the Secretary-General and the Office of Human Resources Management ensure that staff have a more comprehensive understanding of the rules, regulations, instructions and administrative issuances (see resolution 72/256, para. 9) and notes also the Office's continuing project to consolidate, harmonize and systematize those instruments. Some staff associations have expressed concern that consultations with the Office on the project

were inadequate. If that is the case, the Council would suggest that this issue be addressed through existing mechanisms for staff-management consultation.

IV. Acknowledgements

46. The Council wishes to express its gratitude to all stakeholders for their availability and their clarifying and constructive contributions during the interviews and thereafter. Their input was crucial to the understanding of many challenges and to the development of the recommendations contained in the present report.

47. The Council is further indebted to the Office of Administration of Justice for its understanding and attention to the Council's requirements and its tireless follow-up to the Council's requests.

(*Signed*) Yvonne **Mokgoro**

(*Signed*) Carmen **Artigas**

(*Signed*) Samuel **Estreicher**

(*Signed*) Frank **Eppert**

(*Signed*) Jamshid **Gaziyev**

Annex I

Views of the United Nations Appeals Tribunal

1. The United Nations Appeals Tribunal is the tribunal of final instance in the internal justice system of the United Nations dealing with employment law issues of staff members of the United Nations, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the International Civil Aviation Organization and several other international agencies and entities, as well as for participants of the United Nations Joint Staff Pension Fund. The Appeals Tribunal functions well and delivers on its mandate within the limitations of its jurisdiction and powers. There is a strong sense of collegiality among the judges and the Registry staff and a conscientious commitment to the tasks at hand.

2. The Appeals Tribunal currently composed of six judges, namely:

Martha Halfeld (Brazil)

Sabine Knierim (Germany)

Richard Lussick (Samoa)

John Murphy (South Africa)

Dimitris Raikos (Greece)

Deborah Thomas-Felix (Trinidad and Tobago)

3. In the period from July 2017 to June 2018, the Appeals Tribunal held three two-week sessions: two in New York (October 2017 and June 2018) and one in Amman, at the invitation of the Commissioner-General of UNRWA (March 2018).

4. As at 30 June 2018, the Appeals Tribunal has received 1,183 appeals and disposed of 1,135; 48 appeals are thus pending final adjudication. The Appeals Tribunal finalizes between 25 and 35 appeals per session.

5. The Appeals Tribunal is ably assisted by a small complement of Registry staff and legal officers and administrators in administrative support; preparatory work; legal research; the drafting of briefing notes; and the finalization and publication of judgments. The tasks are extensive and demanding but are consistently carried out by staff with professionalism, efficiency and enthusiasm.

6. Following the adoption of General Assembly resolution 72/256, in which the Assembly approved remuneration of judges for adjudicating interlocutory motions, it became possible in January 2018 for the Appeals Tribunal to reinstate the duty judge system to deal with interlocutory motions filed between the sessions of the Tribunal. The system is working well and ensures that motions and procedural matters are dealt with timeously, appropriately and in a manner that facilitates the efficient adjudication of the appeals during sessions.

7. The Office of Administration of Justice has recently upgraded the website of the internal justice system, which is as a result much improved and user-friendly. There remains a need to improve the search function to allow for search by topic and search term, which will help the judges and other stakeholders to prepare more proficiently. The problems with the court case management system continue to make it difficult to access the records of proceedings of the Dispute Tribunal and to source and locate documentary evidence. The system is simply too slow and unreliable and thus continues to frustrate and present challenges. However, the Appeals Tribunal is aware that the Office is making concerted efforts to address the challenges through the introduction of a new system and is confident that the issues will be resolved soon.

8. The Appeals Tribunal appreciates the General Assembly's amendments to the system of remuneration for judges of the Appeals Tribunal to provide payment for the adjudication of interlocutory motions and a monthly stipend for the President. Concerns remain about the "pay per judgment" system, which introduces conflicts of interest in relation to the distribution of cases, dissenting and concurring minority judgments and postponements. It may be preferable for judges to be paid a flat rate per session.

9. The attenuated power of the Appeals Tribunal to award reinstatement remains a concern among judges. Article 9 (1) of the statute of the Appeals Tribunal provides that when the Appeals Tribunal orders reinstatement (specific performance) in dismissal cases it shall also set an amount of compensation that the Secretary-General may elect to pay as an alternative to reinstatement. Anecdotal evidence suggests that the Administration routinely does not give effect to orders of reinstatement and opts rather to pay the amount of in-lieu compensation.

10. The limited remedial power often will not do justice to staff members who deserve to be reinstated to pursue United Nations careers which may have been illegally terminated by an abuse of power. Moreover, without the protection of an effective reinstatement remedy, it is easier for managers to abuse the managerial prerogative and victimize staff members who lodge grievances seeking to assert their rights. Anecdotal evidence suggests that this kind of retaliation has happened from time to time. In the circumstances, perceptions about judicial effectiveness are at risk of becoming negative among staff members. The tribunals will be seen as unable to provide an effective and protective remedy. An employment tribunal that lacks the power of reinstatement will soon lose legitimacy. It will be better to repose greater trust in the internal judiciary by permitting the tribunals a power of reinstatement circumscribed by appropriate requirements of practicability and tolerability. [a] In addition, dismissals which are procedurally unfair, but in all other respects lawful and reasonable, normally should not lead to reinstatement or re-employment.

11. With regard to the matter of referrals for accountability, it may be prudent from a judicial point of view for the Secretary-General to report on actions taken pursuant to individual referrals for accountability. This will guarantee the efficacy of the remedy. Futile referrals to the Secretary-General will further undermine the legitimacy of the tribunals and will do little to foster the values of transparency or accountability aimed at changing managerial behaviour in compliance with the applicable ethos.

[a] Several other international administrative tribunals, such as the International Labour Organization Administrative Tribunal, the World Bank Administrative Tribunal, and the Council of Europe Administrative Tribunal, have such power. See, for example, International Labour Organization Administrative Tribunal statute, article VIII: "In cases falling under article II, the Tribunal, if satisfied that the complaint was well founded, shall order the rescinding of the decision impugned or the performance of the obligation relied upon. If such rescinding of a decision or execution of an obligation is not possible or advisable, the Tribunal shall award the complainant compensation for the injury caused to her or him."

Annex II

Views of the United Nations Dispute Tribunal

Report of the President of the United Nations Dispute Tribunal for the period from 1 January to 31 December 2017

Introduction

1. The report of the judges of the United Nations Dispute Tribunal includes facts regarding the Tribunal as well as its activities during the period from 1 January to 30 December 2017. The report also provides a summary of the Tribunal's achievements during the period and identifies present and future challenges.

2. The Tribunal commenced operation on 1 July 2009 as the first instance tribunal of a two-tier formal system of administration of justice, providing internal dispute resolution in respect of matters arising from disputes between the staff and the United Nations concerning employment and disciplinary matters. The judges are committed to the ideals, the mission and the work of the United Nations.

3. The Tribunal refers matters for mediation where possible. The decisions of the Tribunal are such as to not only resolve disputes but also to interpret the administrative issuances of the United Nations. Its decisions guide and inform in respect of policy development. The Tribunal further provides an internal justice system which supports the immunity of the United Nations by providing a system of justice separate from that of the jurisdictions of its Member States.

4. The Tribunal plays an important role in the review of disciplinary cases brought before it. In that respect, it examines the specific complaints of an applicant in respect of the carrying out of investigations, the observance of due process and procedural fairness, considerations for the meeting of the standard of proof and the proportionality of any imposed penalty. It also adjudicates in other cases including those alleging abuse of power, harassment, the absence of fairness in selection processes and terminations and retaliation against a staff member for any reason.

5. By the work it does, the Tribunal is also generally an important contributor to the promotion of accountability throughout the Organization, in particular by the reference of staff for accountability where appropriate.

6. There are several major challenges, including concerns about judicial independence in relation to the Tribunal, considerations of the application of the principle of the rule of law, administrative delays in recruitment and many systemic issues that appear not to reflect the intentions of the General Assembly when it established the new internal justice system.

7. The number of cases currently before the Tribunal is increasing. Some cases are effectively multiple applicants involving identical or nearly identical applications. Owing to the current reforms and consideration of future reforms in the United Nations, it is anticipated that this trend is likely to continue.

8. From its inception, the notion of the independence of the Tribunal has lacked definition and does not appear to be understood within the hierarchy of the Organization. It is apparent to the judges of the Tribunal that independence is being equated with and limited to a policy of direct non-interference by the executive branch in respect of judicial decisions, rather than meeting the international standards of judicial independence and autonomy holistically.

9. In Geneva, the Tribunal has a pilot monthly dialogue with counsel from the Office of Staff Legal Assistance and the counsel who represent the respondent to discuss issues and procedures. In Nairobi, the Tribunal judges participated in a forum organized by the Ombudsman on the internal justice system.

10. During the reporting period, the Tribunal held a plenary meeting in May 2017 in New York, during which it considered issues of independence and judicial autonomy and held meetings with the Secretary-General, officials of the General Assembly and Secretariat officials. Immediately following the plenary meeting, the judges held a workshop, at which they addressed issues of procedure and legal policy and conducted a review of certain aspects of the applicable case law and general trends and developments in the law.

11. It is important for the future of the Tribunal and the internal justice system of the United Nations that the General Assembly, the Internal Justice Council and the judges address the key challenge of judicial independence to ensure that both the mandate of the Tribunal and the universal principle of the separation of powers are properly understood and appreciated.

President of the Tribunal

12. In accordance with article 1 of the rules of procedure of the Tribunal, during its plenary meeting of May 2016, the judges elected Judge Rowan Downing as President for a period of one year, from 1 July 2016 to 30 June 2017. This period was extended to 31 December 2017 to realign the term of the President of the Tribunal with the calendar year and the reporting year used for the United Nations. Judge Nkemdilim Amelia Izuako was elected as President of the Tribunal commencing on 1 January 2018.

Judges of the Tribunal

13. During the reporting period, the Tribunal was composed of the following judges:

Teresa Maria da Silva Bravo (Portugal), full-time, based in Geneva

Rowan Downing (Australia), ad litem, based in Geneva

Memooda Ebrahim-Carstens (Botswana) full-time, based in New York

Alessandra Greceanu (Romania), ad litem, based in New York

Alexander W. Hunter, Jr. (United States of America), half-time

Nkemdilim Amelia Izuako (Nigeria), ad litem, based in Nairobi

Agnieszka Klonowiecka-Milart (Poland), full-time, based in Nairobi

Goolam Meeran (United Kingdom of Great Britain and Northern Ireland), half-time.

Deployment of half-time judges

14. During the reporting period, the two half-time judges completed deployments in New York, Nairobi and Geneva. Judge Meeran served a three-month deployment in Geneva from 30 January to 30 April 2017 and another three-month deployment in Nairobi from 15 November 2017 to 15 February 2018. Judge Hunter was deployed in Nairobi from 3 January to 14 April 2017 and in Geneva from 21 August to 10 November 2017.

Judicial statistics of the Tribunal

15. The general judicial activity of the Tribunal for the period from 1 January to 31 December 2017 is set out below.

16. During the reporting period the Tribunal registered a total of 382 new cases, including 24 inter-Registry transfers. The Tribunal disposed of 268 cases, rendered 100 judgments, issued 763 orders and held 210 hearings. The number of judgments does not equate to the number of cases disposed of because some of the cases have been closed by orders on withdrawal and because of settlements following case management discussions. There were moreover several instances when a single judgment was issued in relation to two or more cases that concerned similar issues.

17. Of the 268 cases disposed of during the reporting period, 63 cases (23.50 per cent) were closed on withdrawal of application. Nine cases were closed following successful mediation through the Office of the Ombudsman, 24 cases were closed following direct informal settlement between the parties and 54 cases were otherwise closed.

18. As already stated, the Tribunal registered 382 new cases during the reporting period. As at 31 December 2017, 372 cases were pending. Geneva had 158 pending cases; Nairobi had 118 pending cases; and New York had 96 pending cases.

19. Overall, from its inception in July 2009 to the end of December 2017, in the eight-year period of its existence, the Tribunal registered a total of 3,030 cases, disposed of 2,658 cases, rendered 1,516 judgments, issued 6,626 orders, and held 1,930 hearings.

20. For this reporting period, 31 per cent of applicants in the cases filed were self-represented.

21. The President of the Tribunal during the reporting period issued two orders on requests for recusal of a judge and one order on the reassignment of a remanded case to a judge.

22. During the reporting period, there were no complaints causing reference to, or consideration of the judicial complaints mechanism.

Hearings

23. During the reporting period, the Tribunal held a total of 211 hearings. Of these, 130 were on the merits, and 81 were case management discussions. The breakdown per Registry is as follows: Geneva, 97 hearings; Nairobi, 71 hearings; New York, 43 hearings. The hearings were of varying length, from one day to 10 days.

24. Hearings are becoming the norm, cases generally being considered on the papers only at the request of both parties and upon a decision by a judge that it is appropriate to do so. Those matters considered on the papers upon the motion of the Tribunal generally involve suspension of action applications and issues of obvious lack of receivability (admissibility). Hearings are rarely held in respect of suspension of action (injunction) applications where necessary, as those are based on prima facie findings and dependent on the material provided in an application and the reply, unless treated as an ex parte application.

25. Case management discussions involve a scheduled meeting of the parties with the Tribunal for a discussion about the application and the way it shall proceed. Such discussions are undertaken in all substantive cases except those that exhibit an obvious lack of receivability, when a hearing is urgent, or when only submissions are made and evidence is not presented.

26. The purpose of a case management discussion is to identify the claim and issues to be determined between the parties, ask parties to address legal issues of concern to the Tribunal, schedule hearings and encourage the parties before the Tribunal to mediate through the Office of the Ombudsman or to directly resolve matters, where possible.

27. The judges of the Tribunal have observed that when issues, both legal and factual, are isolated and discussed with a judge in case management discussion, there is an increasing desire to proceed to mediation or settlement discussions. It often appears that counsel before the Tribunal can better discuss matters with those instructing them in a more focused manner after a case management discussion.

Issues of independence

General considerations

28. It is essential to note that the independence and the autonomy of judges are not for their benefit. They are for the benefit of the judicial institution, the Organization and ultimately for the parties appearing before the Tribunal.

29. This is at least the third report in which the issues of independence and judicial autonomy have been raised. The judges of the Tribunal are particularly concerned that in the reporting period significant disruption to the work of the Tribunal has occurred because the matter has not been addressed.

30. In its report dated 15 July 2016 (A/71/158), the Internal Justice Council noted the importance of an independent and professional judiciary (para. 4) and stated that:

> It is a characteristic of a mature legal system that all three elements of high authority — the Legislature, the Executive and the Judiciary — respect the separation of powers. This requirement is challenging especially in a hierarchical organization such as the United Nations, but it is nevertheless essential if the rule of law is to be respected. (para. 6)

31. More specifically, at paragraph 37 of that report, the Internal Justice Council highlighted the need for the independence of the judiciary and the difficulty of achieving it in the Organization, while advocating that the Secretary-General and the leadership refrain from conduct that diminishes the authority and independence of the Tribunals.

32. In its report dated 24 July 2017 (A/72/210) the Internal Justice Council made further similar observations and emphasized that judges must fulfil their adjudicatory role and function without fear, favour or prejudice.

33. The Internal Justice Council also noted the need for the emoluments of the judges not to be linked to those of staff members and made the recommendations set out below.

> The judges serving on the Tribunals are independent, impartial arbiters responsible for rendering justice on the basis of the facts and applicable law. They are not staff members of the United Nations and should not be linked with the staff in terms of their compensation and emoluments. With respect to their judicial decision-making, they enjoy full autonomy and are not subject to management oversight. The Council recommends that a review of all policies and procedures be carried out to ensure adherence to that basic principle of judicial independence and autonomy. Furthermore, the Council recommends that the Office of Human Resources Management submit for the consideration and approval of the General Assembly a revised compensation package for the

> Dispute Tribunal judges that negates the equivalency linkage to staff compensation, on a "no loss, no gain" basis. (A/72/210, para. 57)

34. The judges of the Tribunal concur with the views expressed and the recommendations made by the Internal Justice Council.[a]

35. In a formal setting, the independence of the judiciary is directly related to the separation of powers in respect of the arms of the governance structures of the United Nations. If there is no separation of powers properly recognized and supported, not only do the necessary checks and balances not function properly in respect of the matters within the jurisdiction of the Dispute Tribunal and the Appeals Tribunal, there can be no proper assertion of the rule of law or true provision of justice for staff or the Organization.

36. The judges of the Dispute Tribunal have serious concerns about the persisting lack of institutional autonomy and independence of the Tribunal which runs contrary to the provisions of General Assembly resolution 63/253. The Administration appears to operate upon an assumption that judicial independence is protected if it refrains from exerting pressure on the results in individual cases. Judicial independence is a much broader concept. In the case of the Tribunal, institutional aspects of autonomy and independence are structurally and practically absent, and the effect is that justice is impeded and is sometimes neither done nor seen to be done.

37. One of the most egregious manifestations of the denial of institutional independence was a statement on the official website of the Office of Administration of Justice in which it was asserted that the Tribunal is an "entity within the Office of Administration of Justice". Following the intervention of Tribunal judges, that statement was removed. However, the perceptions have been shaped and are still visible, for example, in the manual of the Office of Internal Oversight Services, wherein the Tribunal is described as "an administrative body which hears and decides cases".

38. The lack of recognition of judicial autonomy manifests itself in several aspects which are vital for the proper functioning of the Tribunal. Some of these include the set-up and the functions of the Office of Administration of Justice, the insecure status and conditions of service of judges, the denial of a role for judges in deciding the Tribunal's budget, the issue of judges being shut out with regard to training needs and staffing, the denial of any role to judges for directly making recommendations for legislative amendments including legislation relating to the functioning of the Tribunal, and the blocking of any dialogue between judges and the General Assembly as a legislative body.

39. In all these areas, international standards of judicial independence are being breached. The Tribunal judges' concerns were the subject of a letter to the President of the General Assembly in October 2016. No response to that letter was received.

40. Constituting a very serious problem is the fact that the Tribunal judges are being treated by the Administration as staff. This treatment has no basis in the governing laws and breaches the judges' conditions of service. This approach sometimes hinders the discharge of the judicial function by leading to a conflict of interest.

41. During the reporting period, there have been two most serious examples of parties before the Tribunal being subjected to the potential loss of access to justice because of the judges being conflicted because they are considered as staff and do not have the requisite structural independence and functionality.

[a] See also A/71/158, paras. 38–63.

42. In May 2017, the Tribunal was to adjudicate several cases filed in respect of the changes to the salary scale of staff. As the judges are remunerated upon the basis of that scale, and not as part of an independent determination by law, the issue of a conflict of interest had to be considered. The Tribunal determined that the doctrine of necessity would have to be applied. That is, notwithstanding the direct conflict of interest, the judges of the Tribunal had to deal with the cases, as there was no other way for the parties to litigate the cases.[b]

43. Then, in September 2017, two judges were forced to recuse themselves from cases involving changes to the post adjustment in Geneva, as they, like the applicants before them, were subject to those same changes.

44. These situations should not be repeated, and the problem must be urgently addressed as these issues have a negative impact on the ability of the Tribunal to independently and properly carry out its mandate.

Uncertain status and conditions of service of judges

45. It is a fundamental international standard that the independence of the judiciary is linked to the way the status of judges, in a formal legal sense, is defined and administered. Paragraph 11 of the Basic Principles on the Independence of the Judiciary provides:

> "The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be *adequately secured by law*" (emphasis added).

46. The Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary, adopted by the Economic and Social Council and endorsed by the General Assembly, mandate "offering judges appropriate personal security, remuneration and emoluments" (procedure 5).

47. In more express terms, the draft Universal Declaration on the Independence of Justice, prepared under the auspices of the Economic and Social Council and recommended by the Commission on Human Rights as a tool for the implementation of the Basic Principles, provides that the terms and conditions of service, security and remuneration of judges shall be secured by law and shall not be altered to their disadvantage.

48. The status and remuneration of the Tribunal judges have been exposed to unilateral interpretations by the Office of Human Resources Management. There is a direct and real conflict of interest posed by the arrangement under which the same offices of the Secretariat that appear before the Tribunal are vested with power to determine the judges' conditions of service. Their interpretations exhibit a lack of understanding of the fact that judges are not international civil servants under the Secretary-General.

49. The Tribunal judges are not staff of the Secretariat or the Executive. They are elected officials of a subsidiary organ of the General Assembly and form part of the judicial branch of the United Nations governance structures. The General Assembly in its resolution 63/253 specified directly which aspects of the Staff Rules are to be applied to the Tribunal judges as part of their conditions of service. The conditions of service are unsatisfactorily expressed to include the matters set out in the annex to the resolution (see A/63/314).

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[b] See *Lloret Alcaniz v. Secretary-General of the United Nations* (case UNDT/GVA/2017/020, order No. 113 (GVA/2017)).

50. The result is that the Secretariat has discretion as to what additional matters, if any, are to be included in the conditions of service of judges. The conditions of service should be comprehensive and complete in every respect, leaving no room for change or conjecture during the period of appointment. They should be respected as being the provisions of a resolution of the General Assembly and thus not subject to the Staff Regulations and Rules, unless so expressly provided.

51. This notwithstanding, the Staff Rules are applied improperly to the judges. For example, the General Assembly provided by resolution for the compensation of judges, including for part-time judges. In respect of part-time judges, it was expressly stated that they would have:

> Participation in the Pension Fund under supplementary articles A and B of the regulations of the fund; the pensionable remuneration level and rates of contribution would be set at those levels applicable to part-time staff members of the United Nations at the D-2 level (A/63/314, annex).

52. This condition, when placed in context, may be interpreted to mean that the half-time judges would be in receipt of a half pension after their seven years of service, as well as being covered for disability and the like. They had an amount equal to half the full-time judges' pension payment deducted from their emoluments. All other benefits provided to the half-time judges are half those provided to the full-time judges. The possible receipt of a pension upon retirement at the end of their elected term of seven years was never possible under the rules of the Pension Fund of the United Nations, as seven years' half time would represent only 3.5 years' full-time service of a staff member and thus a monthly pension would not be vested, given that vesting only occurs after five years' full-time service of a staff member.

53. At best this is ambiguous and appears to be inconsistent with the conditions expressly set by the General Assembly for judges who are not staff members and whose term is limited to seven half-time years, that is, three and a half full years. The Administration treated the retiring half-time judge as a staff member rather than as an official elected by the General Assembly who was expressly to be provided with a pension upon the conclusion of her term, even though that term would never reach the period equivalent to five full years, as required by the staff Pension Fund rules. It is unfortunate that the Secretary-General did not make it clear to the General Assembly and to those judges occupying the half-time posts that they would never be in receipt of a pension benefit.

54. Further, judges who were about to take office in July 2016 were issued "appointment letters" by the Office of Human Resources Management as if they were staff members. The letters purported to decrease the Tribunal judges' emoluments as if they were staff and to introduce a clause subordinating the judges to all present and future Staff Regulations and Rules, with some variations among the Secretariat offices.

55. It must be noted that the Tribunal judges are reflected in the Umoja computer system as staff members and are required to wear "staff" identification badges. Recently, pensionable remuneration of the Tribunal judges has been unilaterally decreased by the Administration. These administrative arrangements are inaccurate and inappropriate external manifestations of a status of international civil servants employed by the Secretariat and ascribed to judges, which undermines trust in judges' independence and impartiality.

56. A conflict of interest is inherent in the arrangement by which the Tribunal judges who, when subjected to the Staff Rules regime, as augmented, modified and interpreted by the Office of Human Resources Management, are exposed to the risk of disputing those rules and interpretations which are wrongfully made to apply to

them and taking positions which will then compromise their impartiality in all similar disputes coming before them.

57. It is important that, in accordance with the United Nations standards on the independence of the judiciary, the Tribunal judges' status, including remuneration, be sufficiently "secured by law", that is, in this case, the resolutions of the General Assembly. In respect of remuneration, it is not a matter of the judges requesting an increase in emoluments but that the emoluments paid must be properly determined and secured pursuant to international standards for the judiciary.

Other issues

Set-up and functions of the Office of Administration of Justice

Executive Director

58. In paragraph 28 of its resolution 61/261, the General Assembly resolved to establish the Office of Administration of Justice to coordinate the justice system.

59. The operations of the Office are governed by a Secretary-General's Bulletin (ST/SGB/2010/3), in which it is asserted that the Office of Administration of Justice is an "independent" office. Under section 2, it provides substantive, technical and administrative support to the Dispute Tribunal and the Appeals Tribunal through their Registries.

60. There are several significant structural lapses compromising the independence of the Office of Administration of Justice. The Office can be viewed as compromised by paragraphs 3.4 and 3.5 of ST/SGB/2010/3, which provide:

> 3.4 The Executive Director advises the Secretary-General on systemic issues relating to the administration of internal justice, including by recommending changes to regulations, rules and other administrative issuances that would improve the functioning of the system of administration of justice.
>
> 3.5 The Executive Director prepares reports of the Secretary-General to the General Assembly on issues relating to administration of justice; liaises, as appropriate, on those issues with other offices; and represents, as necessary, the Secretary-General at meetings of intergovernmental bodies, international organizations and other entities on issues of administration of justice.

61. These provisions clearly show that the Executive Director of the Office of Administration of Justice reports to and prepares reports for the Secretary-General, who is the only respondent before the Tribunal.[c] The Executive Director also represents the said respondent at meetings. Further, the performance appraisal for the Executive Director is through the Chef de Cabinet, also within the Executive Office of the Secretary-General. The Executive Director is not considered, in practical and structural terms, independent of the respondent.

62. It is further suggested that advising the Secretary-General on systemic issues and writing reports on his behalf cannot be combined with "providing substantive, technical and administrative support" to the Dispute Tribunal and the Appeals Tribunal. The provision of advice should be placed with the Executive Office of the Secretary-General or the Office of Legal Affairs. The Office of Administration of

[c] See Article 97 of the Charter of the United Nations, whereby the Secretary-General is "the Chief Administrative Officer of the Organization"; Article 101 of the Charter, which provides that "All staff shall be appointed by the Secretary-General under regulations established by the General Assembly"; and article 2.1 of the statute of the Dispute Tribunal, which provides for the Secretary-General to be the respondent in all matters coming before the Tribunal.

Justice should embrace the support function and be committed to acting in the interest of justice as a priority over any other interests. The Executive Director cannot bona fide serve two masters whose interests are in conflict. Obviously, the Executive Director cannot give the judges substantive advice, either directly or through the Registries. The unsavoury practical consequences of this in-built conflict are numerous and are present throughout the administrative hierarchy of the Office.

63. To remove any doubt about the actual lack of structural and practical independence of the Office of Administration of Justice arising from its being located within the Secretariat, ST/SGB/2015/3, on the organization of the Secretariat, provides in its paragraph 3.2 that the Office is part of the Secretariat.

Office of Administration of Justice

64. Section 5 of ST/SGB/2015/3 further provides for reporting and the provision of advice to the Secretary-General and the carrying out of tasks as may be designated by the Secretary-General, the respondent. This is entirely inconsistent with the independence of the Office of Administration of Justice asserted in section 2 of ST/SGB/2010/3 and, as such, ST/SGB/2015/3 confirms that the Office is not independent, but under the direct control of the Secretary-General.

65. The Executive Director of the Office of Administration of Justice is also conflicted by being the first reporting officer for the head of the Office of Staff Legal Assistance, and the second reporting officer for the staff of that Office. Upon the retirement of the former Executive Director in February 2017, it was noted that she had to remain in post as it was not possible for the Principal Registrar to act as officer-in-charge of the Office of Administration of Justice because of the conflict, which had been recognized for the first time.

66. Given the role of the Principal Registrar in the administration of the Dispute Tribunal and the Appeals Tribunal, the holder of that post could not also act as the officer-in-charge of the Office of Staff Legal Assistance, as it is a party appearing before the two Tribunals. There is an inherent conflict for the Office of Administration of Justice to be involved in the direct administration of the Dispute Tribunal, the Appeals Tribunal and of course the Office of Staff Legal Assistance, which is a party habitually appearing before the Tribunals (see ST/SGB/2010/3, sect. 7).

67. The structural conflict for the Executive Director was further demonstrated when evidence was given before the Tribunal in a case in which it was disclosed to the Tribunal that the former Executive Director demanded and was given access to copies of case notes made by a legal officer of the Office of Staff Legal Assistance in cases the officer was handling. It was said that such notes were needed to manage the staff member. In so doing the confidentiality of the conduct of cases was seriously breached.

68. Evidence in the same case disclosed that the former head of the Office of Staff Legal Assistance had copied the Executive Director in when sending emails concerning a case being conducted by the staff member of the Office. The confidentiality of the lawyer and client relationship was most seriously breached. The structural issues need the most serious and urgent review and rectification, which can be achieved through a restructuring to recognize the proper and independent role of the Office of Administration of Justice. It is suggested that an examination of the modalities used to ensure independence at the International Civil Service Commission *could be helpful if* adopted to ensure the independence of the Office of Administration of Justice.

69. Unfortunately, the judges have had several serious disagreements with the current Executive Director of the Office of Administration of Justice. These have

arisen mainly from the unnecessarily combative stance of the Executive Director, who in a correspondence of 1 November 2017 to the then President of the Tribunal asserted that:

(a) The Office of Administration of Justice serves as a buffer between the Dispute Tribunal and the Administration and managers and acts as the guardian of judicial independence, and demanded that all correspondence between the Tribunal judges and management pass through her office;

(b) The Office of Administration of Justice will ensure that the Tribunal is isolated from the Administration to be effective and credible and that all correspondence from the judges to the Administration and from the Administration should pass through the Office of Administration of Justice and that the Administration would be notified to this effect;

(c) The judges should not take part in conferences and that to do so would be in breach of their code of conduct;

(d) The judges should not be involved in outreach or stakeholder meetings.

70. Most of the judges examined the functions of the Executive Director as provided in section 3 of ST/SGB/2010/3 and found no capacity of the Executive Director to make such claims and assertions and advised her accordingly. The judges are not answerable to the Executive Director and it is not part of the functions of the Executive Director to presume to provide any guidance on the conduct of the judges. The Executive Director is not responsible for the management of the judges.

Principal Registrar

71. As the Principal Registrar is within the Office of Administration of Justice, this position should also be independent. At a meeting of the judges with the Secretary-General in May 2017, the judges noted that the Principal Registrar was in attendance and was advising the Secretary-General in respect of matters of concern raised by the judges. The judges are firmly of the view that it was inappropriate for the Principal Registrar to advise the Secretary-General in these circumstances, especially when it is asserted that the Office of Administration of Justice is independent.

72. The request should not have been made for the Office of Administration of Justice to be present and, equally, should not have been accepted, if independence was truly believed to exist in the Office. It may be that the reporting lines through the Chef de Cabinet precluded the Executive Director and the Principal Registrar from declining the invitation to attend the meeting. If this be the case, it further discloses issues of concern in respect of independence.

73. Section 4 of ST/SGB/2010/3 provides that the Principal Registrar is accountable to the Executive Director and is responsible for overseeing the activities of the Registries of the Dispute Tribunal and the Appeals Tribunal:

4.3 The core functions of the Principal Registrar are:

(a) Coordinating the substantive, technical and administrative support to the judges of the two Tribunals in the adjudication of cases, including distribution of cases, in particular by monitoring and enforcing compliance with the rules of procedure of the Tribunals by the parties;

(b) Coordinating and monitoring the maintenance of the Tribunals' registers and the publication and dissemination of the decisions, rulings and judgements rendered by the Tribunals;

(c) Coordinating and monitoring the maintenance of the Tribunals' case law and jurisprudence databanks and reporting on the work of the Tribunals,

through the Secretary-General, to the General Assembly and other bodies, as may be mandated;

(d) In consultation with the Executive Director, ensuring optimal use of the human and financial resources allocated to the Tribunals; analysing the implications of emerging issues in the Tribunals; and making recommendations on possible strategies and measures;

(e) Advising the Executive Director on administrative, human resources and logistical matters related to the Registries' operational activities and coordinating the preparation of reports on the administration of justice and their presentation to intergovernmental bodies, such as the General Assembly and its committees and the Advisory Committee on Administrative and Budgetary Questions, as appropriate;

(f) Representing, as required, the Executive Director at meetings of intergovernmental bodies, at meetings with United Nations and non-United Nations officials and at international, regional or national meetings.

74. Paragraph 4.3, specifically, purports to give judicial power to the Principal Registrar. This provision is demonstrative of a structural and systemic error. The Principal Registrar has no ability, entitlement or power to "enforce compliance with the rules of procedure of the Tribunals by the parties". This is clearly an exclusive function of the judges of both the Dispute Tribunal and the Appeals Tribunal. There are no rules of procedure making provision for such a function to be exercised, and the Secretary-General cannot donate judicial power.

75. There is a real issue with the Principal Registrar holding the position of Principal Registrar in both the first instance tribunal, the Dispute Tribunal, and the appellate tribunal, the Appeals Tribunal. A clear conflict would arise should there be a need for the Principal Registrar to access confidential information of either Tribunal. There must be distance in respect of such information to ensure that reporting officers cannot be the subject of any allegation that they may have influenced an outcome of a case at first instance or on appeal. The conflict here is amplified by the fact that the Principal Registrar effectively acts as the deputy of the Executive Director in the performance of the duties under paragraphs 3.4 and 3.5 of ST/SGB/2010/3. Further, the holder of the post of Principal Registrar is ultimately responsible to the Secretary-General, the respondent.

76. Conflict is also present regarding "coordinating the substantive support [...] in adjudication of cases", since serving both Tribunals is incompatible with giving the judges substantive advice. In respect of issues of coordinating hearings, in November 2017, matters in respect of the proposed timing and location of hearings away from a seat of the Tribunal were disclosed to the Office of Administration of Justice for the purposes of coordination and led to unauthorized disclosure of this confidential information to a senior manager at the proposed location of the hearing. The Tribunal had to cancel several of the scheduled hearings. To ensure confidentiality of sub judice matters, the judges are of the view that anyone not located within the chambers of the Tribunal as staff assigned to the Tribunal ought not to be involved, notwithstanding reporting lines.

77. The judges of the Tribunal are concerned at the failure on the part of the Office of Administration of Justice to consider the need to avoid the risk of actual or perceived conflict when staff of the Management Evaluation Unit of the Department of Management who have been involved in review of cases that come before the Tribunal, or former staff of the Office of Legal Affairs who have acted as counsel for the respondent before the Tribunal are then seconded to undertake work in the

Registries of the Tribunal. This means that the Tribunal is regarded as being the same as any other work unit in the United Nations, which it is not.

78. In November 2017, pursuant to article 21.3 (c) of the Tribunal's rules of procedure, the judges of the Tribunal issued judicial directions to better define and delineate the role of the staff within the chambers of the Tribunal and their separation from the executive branch of governance. The staff of the Tribunal should not work on any document to be provided to the executive branch as that compromises their positions and the independence of the Tribunal. This often happened in the past when they were asked by the holders of the posts of Executive Director and Principal Registrar to work on reports and other documents for the Secretary-General, such as the reply of the Secretary-General to the report of the Interim Independent Assessment Panel.

79. The said reply to the Panel's report was the formal response to the General Assembly from the Secretary-General as chief administrative officer of the United Nations[d] and thus head of the executive branch. The Office of Administration of Justice was directed by the Secretary-General to draw up the reply. Because the Tribunal's staff report either directly or indirectly to the Executive Director and the Principal Registrar, they are made to work on such documents when directed to do so. The judicial directions seek to clarify the proper role of the staff of the Tribunal.

80. In structural and thus practical terms, the independence of the Office of Administration of Justice is, in fact, a fiction. It may be that its independence can be achieved only by the Office reporting directly to the General Assembly. The position of the Executive Director of the Office should be considered for a defined term of office with a ban on holding further functions within the Organization for a period of five years.

81. The staff of the Tribunal's Registries are hired by the Office of Administration of Justice. They are required to subscribe to the oath of office taken by United Nations staff members but are not obliged to take any oath to keep communications with an assigned judge confidential, to be independent and to work for the ends of justice at the Tribunal. The judges have no rôle in the selection or any meaningful role in performance assessment of the staff of the Tribunal.

82. The reporting lines for staff members in the Tribunal Registries, except for the Dispute Tribunal Registrars, go through the Principal Registrar as second reporting officer. The reporting line for the Registrars is to the Principal Registrar and then to the Executive Director who in turn reports to the Secretary-General through the Chef de Cabinet.

83. To ensure that registry staff members render proper "substantive support", the Tribunal judges stress that the status of Tribunal staff must be such that they are independent of the Secretary-General, who is the only respondent before the Tribunal they work in. It has been recommended above that the approach taken in 1974 to guarantee the independence of the International Civil Service Commission and that of its staff be applied to the Office of Administration of Justice. Article 20.2 of that Commission's statute provides in relevant part that staff of the Commission are responsible to the Chairman and shall be removable only after consultation with him or her.

84. The Tribunal judges are concerned that the Office of Administration of Justice manifests a bureaucratic culture as opposed to a judicial one. The five most senior positions in the Office are largely consumed on management. Even so, legal officers and legal assistants are tasked with administrative functions, such as collecting

[d] See Article 101 of the Charter of the United Nations.

statistics. This needs to be addressed, together with consideration of the substantive work of the Office, including advising and representing the Secretary-General.

85. The concern of the Tribunal judges arises from the fact that, under the current state of affairs, the Tribunal staff members who are recruited and supervised by the Office of Administration of Justice are asked by their managers to undertake administrative duties and tasks, thereby creating a conflict with their support to the judges in judicial work. It needs be emphasized that independent and professionalized judges alone do not make an independent judiciary. The staff of the Tribunal must work in confidentiality and exclusively with the judges and at the judges' direction to ensure the independence of the judicial process and the judicial institution.

86. Regarding a further perception of the Tribunal as being part of the Office of Administration of Justice, there have been instances in which senior managers and litigants alike have inappropriately resorted to reporting their grievances about certain decisions, directives and resolutions of the body of Tribunal judges, and the decisions of individual judges, to the Executive Director and/or the Principal Registrar.

Location of the New York courtroom

87. The location of the Dispute Tribunal courtroom in New York remains a matter of serious concern. Because the courtroom is in a building outside the Secretariat which has its own separate security, it is extremely difficult for staff members and members of the missions of Member States to access it. This inhibits transparency and reinforces the impression that the Tribunal has been purposefully relocated out of sight.

88. The Dispute Tribunal in New York was initially in the main Secretariat building. During the substantial renovations of the Secretariat building it was relocated to rented premises. The judges were not consulted about the decision to not return the Tribunal to the Secretariat building. The current premises effectively inhibit the attendance of staff members or delegates at hearings whereas, when the Tribunal was located in the Secretariat, there was a significant interest shown by staff as well as delegates. In July 2015, the Tribunal judges unanimously decided that the New York seat of the registry should be in the main Secretariat building and for reasons of transparency the Tribunal courtroom should also be there.

89. The judges also agree that it is unacceptable for the offices of the Office of Administration of Justice to be in the chambers of the Tribunal and that urgent steps should be taken for a physical separation of the Office from the Tribunal chambers pending the relocation and return of the Tribunal to the main Secretariat building. The sharing of premises has given rise to the impression that the judges are subservient and accountable to the Administration through the Executive Director. In 2015 the Executive Director was requested to implement the resolution or to examine its feasibility.

90. Although there was space for the offices of the Office of Administration of Justice to relocate, the Executive Director declined to move. When a new Executive Director was appointed in 2017, she also declined to consider the removal of the offices from the chambers of the judges. The judges are concerned that there is a continuing lack of understanding of the issues involved.

91. The Internal Justice Council expressed strong views on this matter in its previous report (A/72/210) and recommended that the General Assembly request the Secretary-General to consider relocating the Tribunals to facilitate access by non-staff members to hearings and to physically separate the Tribunals from the Office of Administration of Justice.

Denial of a role in advising on issues relevant for the functioning of the Tribunal

Budget

92. One of the issues relevant for the functioning of the Tribunals is the budget. Discussions with the Executive Director show that the budgets for the Dispute Tribunal, the Appeals Tribunal and the Office of Staff Legal Assistance are to some extent mixed. This is true at least in respect of travel and training. It is inappropriate for any budget of the Tribunals to be mixed in anyway whatsoever with that of one of the parties appearing before them or any other office. It is also noted that, contrary to the recognized international standards of judicial autonomy, and the request of the judges, there has been no consultation by the Office of Administration of Justice with the judges of the Dispute Tribunal concerning the budget for the years 2018 and 2019.

93. This approach is wrong, as those framing the budget have no knowledge whatsoever of the requested needs of the judges or, most importantly, areas where the judges consider that funds can be saved. The need to consult was also highlighted by the Internal Justice Council in its previous report (A/72/210) and it was recommended that all units administered by the Office of Administration of Justice be consulted on their resource needs for preparation of budgets.

94. The judges demand that in the future the Office of Administration of Justice consult them in respect of budgetary issues and that the Fifth Committee of the General Assembly and expect that the Advisory Committee on Administrative and Budgetary Questions will understand the need for a separation of budgets of the Tribunal from budgets of those who appear before it. As at the time of writing of this report, the provisions made for budget items and contents of the budget remain opaque for the judges.

Training

95. Decisions on spending for training were made without sufficient consultation with the judges. Basing its decisions on information and belief, the Office of Administration of Justice disbursed funds for the unnecessary participation of the bureaucrats within that Office in training which was judicial in nature and in training in mediation which is not relevant for their duties at the Office.

96. The training of the staff of the Tribunal lacked planning and coordination. When reasonable requests were made by staff to attend specific training, the approval came too late to allow them to register, although they had made the requests well in advance. Other training sessions appeared to be organized from New York in great haste, with effectively only three hours being allowed for confirming responses from the other registries.

Consultation on amendments

97. The Tribunal judges are not consulted on the drafting of rules and regulations that either define their operation or are otherwise to be applied by them. This is unfortunate considering the concentration of first-hand knowledge and expertise that the judges represent. It is not unusual for judges to be consulted by a legislative body, through its committees, in respect of issues of law reform, legislation and regulation, and related issues.

Lack of communication with the General Assembly

98. The Tribunal judges do not report directly to the General Assembly, but rather through the Internal Justice Council. This is an arrangement which appears to lack direct authorization and guarantee. It developed as a practice of the Internal Justice

Council, and no more. The President of the Dispute Tribunal, on behalf of all the judges, should report directly to the General Assembly through the Sixth Committee and be available for comment to the General Assembly, as is the case with the other courts and tribunals associated with the United Nations.[e]

Dispute resolution mechanism for the judges

99. Because of the current structure, there are several issues in dispute between the executive branch and the judges of the Tribunal concerning their conditions of service and the application thereof. This includes the pension issue for half-time judges. The judges are placed in an embarrassing position where the matters cannot be resolved since the executive branch, on the advice of the Office of Legal Affairs, may well take a position which the judges find untenable. This is indicative of the need for the institution of a dispute resolution mechanism for the judges. It is suggested that resort could be had to the International Labour Organization Administrative Tribunal.

Ad litem judges

100. The position of the General Assembly in respect of the regularization of the ad litem judges is well understood. It is indeed hoped that, as the internal justice system matures, the need for ad litem judges may well cease. In the interim, however, it is suggested that the one-year term of renewal leads to uncertainty and insecurity and is contrary to the notions of judicial independence and that such ad litem appointments be made for two years. A two-year review cycle, in line with the budget period of the United Nations, would be more appropriate.

Referrals for accountability and the principle of the rule of law

101. During the period from 1 January to 31 December 2017, the Tribunal referred two cases to the Secretary-General pursuant to article 10.8 of the Tribunal's statute.[f] The cases resulted from an examination of matters involving a breach of the Staff Regulations and Rules in both fundamental and possibly corrupt ways. The case of *Valentine*[g] involved a staff member obtaining a position when she was not eligible for consideration, having been added to the list of candidates through improper means and after the time for applications had expired. The judges do not know what has occurred in respect of the referrals, nor would it be appropriate for them to be involved in the process beyond the referral for accountability.

102. The judges have, however, been advised in a subsequent case that the person who was invalidly selected for the post appears to have been confirmed in the post. If this is true, it flies in the face of the universal principle of the rule of law and taints the Organization. The Tribunal's statute provides no details of how a referral is considered, nor any direction in respect of the need to ensure that the enforcement of the laws of the United Nations, as represented by the Staff Regulations and Rules, are not subject to the exercise of a perceived managerial discretion.

103. In *Dalgamouni*,[h] the continuing impunity and bad faith exhibited in the series of unlawful actions of the then Chief of the Regional Service Centre in Entebbe, Uganda, despite multiple adverse findings of the Tribunal, judicial orders and an investigation report were underscored. Despite the Tribunal's referring the Chief of

[e] See the report of the Interim Independent Assessment Panel (A/71/62/Rev.1, para. 183); and the report of the Internal Justice Council (A/71/158, paras. 64 and 65).

[f] Art. 10.8 reads: "The Dispute Tribunal may refer appropriate cases to the Secretary-General of the United Nations or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability."

[g] UNDT/2017/004.

[h] UNDT/2016/094.

the Centre for accountability to the Secretary-General in June 2016, she was promoted barely a year later to the position of Deputy Director of Mission Support at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo. The situation elicited unflattering comments about the Organization in the international media.

104. The principle of the rule of law is such that any identified breach of the law should be the subject of investigation. There is no discretion to waive compliance with the laws of the United Nations and thus authorize an illegal practice. It is suggested that the Internal Justice Council may be an appropriate body to ensure that referrals to the Secretary-General or those otherwise delegated under article 10.8 of the Tribunal's statute are properly considered.

Disclosure of information

105. The judges are concerned that those representing the respondent in cases before the Tribunal, or those instructing such counsel, do not disclose all relevant documents to applicants and the Tribunal. It has become apparent in some cases that managers have also failed to disclose all relevant documents when a management evaluation of a decision is undertaken. This may have caused cases being continued before the Tribunal which should have been resolved at an earlier time if full disclosure had been made. This must represent a cost to all parties and to the Tribunal, as well as constituting an ethical breach of duty to the Tribunal and the Organization.

Forms of relief

106. Article 10.5 of the statute of the Tribunal limits the Tribunal in respect of the final relief it may grant. Even where it finds that an administrative decision is unlawful, it may only order rescission or specific performance while also setting an amount of compensation that the respondent may elect to pay as an alternative to the order of rescission or specific performance.

107. In more than eight years of the Tribunal's existence, no staff member who was found to have been wrongfully denied appointment or promotion or separated has ever been reinstated. It has become a matter of practice within the Organization that, in every case, compensation is paid in lieu of an order of rescission or specific performance.

108. In this regard, the body of Tribunal judges considers that it is again appropriate to draw the attention of the General Assembly to the observations of a three-judge bench in the case of *Nakhlawi v. Secretary-General of the United Nations*.[i]

109. In that case, the Tribunal expressed the view that the policy behind the Tribunal's statute and the whole system of justice is put at risk by the attitude of management to systematically opt for payment in lieu of rescission under article 10.5 (a). It cited the decision in *Valimaki-Erk*[j] and called on the General Assembly to consider whether the underlying policy objective is frustrated by this unwritten policy implemented by senior managers.

110. It is noteworthy that the Internal Justice Council in its previous report observed in respect of the matters raised in the *Valimaki-Erk* case that it appears that management adheres to the rigid policy of "no rescission" and opts to pay compensation and that this posture does not serve justice in every instance.

[i] UNDT/2016/204.
[j] 2012-UNAT-276.

111. It is also worthy of mention that the Staff Regulations of the Council of Europe[k] provide that, when the Administrative Tribunal upholds a staff member's appeal and annuls the Council's decision, the Council is obliged to reintegrate the staff member unless, by a reasoned opinion, it can be successfully demonstrated that reintegration is not possible. It is only in such situation that the Tribunal may fix a sum to be paid as compensation.

112. The judges also observe that both the Administration and the staff of the United Nations may find matters in respect of which it would be appropriate to have the Dispute Tribunal or the Appeals Tribunal consider specific issues of interpretation of a law before it is applied.

The nature of the legal systems to be applied

113. The judges express their general concern about the basis of the laws and their application. It has become apparent that a common-law approach is being favoured over that of the civil law or a hybrid system in respect of the drawing of administrative issuances and in respect of the Tribunal and the use of jurisprudence. In respect of administrative issuances, for example, it is noted that ST/AI/2017/1 provides in paragraph 9.1 (a) that the applicable standard of proof required is "clear and convincing" evidence. This standard of proof is used only exceptionally within some jurisdictions in the United States of America and in no other common-law country. The application of a legal notion exceptionally applied only in parts of one Member State would seem inappropriate for the United Nations.

114. The common-law approach of being bound to jurisprudence in the first instance Tribunal will eventually render the Tribunal inaccessible to the self-represented staff member. Unless the self-represented staff member is a lawyer, it becomes too difficult for him or her to effectively represent him/herself unless he or she has a comprehensive knowledge of the jurisprudence and its application. The judges note that this is a matter already causing some difficulty for self-represented parties after only nine years of development of jurisprudence. This can only become more burdensome for self-represented parties as time goes on.

Drafting of the laws and regulations of the United Nations

115. The judges wish to express their concern in respect of the standard of drafting of the administrative issuances of the United Nations. There are many cases coming before the Tribunal where confusion is caused by the use of the auxiliary verbs: will, shall, would, should, can, could, may, might, must and ought. The almost constant use of the verb "should" leads managers to believe that they have discretion, when indeed they may not have such discretion. The clarity in the administrative issuances is important for all to ensure certainty of action. Stating in these laws and regulations that the use of the auxiliary verb "may" indicates the use of discretion, and "shall" or "must" discloses an obligation, would lead to proper clarification.

The need for consent before holding/convening a three-judge panel

116. The judges of the Dispute Tribunal note that it is provided in article 10.9 of the statute that, before a matter is heard by a panel of three judges, the President of the Appeals Tribunal may provide authorization.

117. Moreover, Appeals Tribunal judges are concerned that such a procedure may unnecessarily complicate procedures and place the President of the Appeals Tribunal in a position where a recusal may be necessary in the event of an appeal concerning any matter which is the subject of such a request, as the President of the Dispute

[k] Articles 60.6 and 60.7.

Tribunal would have informed the President of the Appeals Tribunal of the details of the complexity or importance of the case. It is suggested that the consideration by the President of the Dispute Tribunal should be sufficient to authorize the convening of such a panel.

Initiatives introduced by the Tribunal

118. The Tribunal in Geneva has commenced a pilot monthly dialogue meeting with counsel from the Office of Staff Legal Assistance and the respondent, together with the staff of the Registry, to discuss systemic issues and procedures. The tone of the meeting is such as to encourage an active participation by all participants with a view to increasing the understanding of all participants of the hybrid nature of the Tribunal, which is composed of judges from different legal cultures. A copy of the areas of general discussion is available on request.

119. In May 2017, a digest of cases was completed for internal use by the Tribunal. This is a detailed document referring to the cases of both the Dispute Tribunal and the Appeals Tribunal. It is hoped that it will be expanded to include relevant cases of the International Labour Organization Administrative Tribunal, recognizing the observations of the Redesign Panel in respect of the need to have some harmonization across the United Nations system. The digest is entirely computer-based and will be accessible to all staff.

120. The judges have commenced the writing of a bench book and hope to have it completed soon.

Meetings

Internal meetings

121. The judges continue to hold regular meetings via videoconference. The half-time judges, notwithstanding that they may not be deployed, still attend, with Judge Meeran participating by telephone from the United Kingdom and Judge Hunter participating from chambers in New York, where he resides. These meetings are invaluable and the judges deal with issues as they arise and in a timely manner.

Meeting of the judges with the Internal Justice Council

122. The judges of the Tribunal met with the Internal Justice Council in May 2017 during their plenary meeting held in New York. Issues pertinent to the Tribunal and the internal justice system were discussed.

Meeting of the Tribunal with stakeholders and practitioners

123. Meetings with the Tribunal's stakeholders continue to be held on a regular basis at each seat of the Tribunal. The invitees include counsel appearing before the Tribunal, Staff Union representatives and management representatives. They provide useful interchange of ideas in an appropriate environment where Tribunal users and the judges of the Tribunal are free to make observations and comments. The feedback assists the Tribunal in its work.

124. In Nairobi, judges participated in a symposium organized by the Ombudsman and spoke on the complementarity of the formal and informal systems in the internal justice system and the Tribunal's efforts to encourage mediation of cases as a first step. The judges also addressed the need for mediators to strengthen mediation agreements to protect staff members from being retaliated against after entering such agreements.

125. During the plenary meeting in May 2017, the Tribunal judges held meetings with the Chair and Deputy Chair of the Advisory Committee on Administrative and Budgetary Questions, the Chair of the Fifth Committee, the Secretary-General and several senior administrative officials of the Organization.

Adequate representation of applicants before the Tribunals

126. Unrepresented litigants have a negative impact on the Tribunal's workload. These litigants often do not understand the legal process and tend to file numerous irrelevant documents and submissions, swamp the Registries with unnecessary or inappropriate queries and requests, and generally bog down the system causing delays in proceedings.

127. Almost as important as lack of legal representation of litigants is the amateurish and often damaging representation by individuals who have no legal training. These individuals also do not understand the legal process and file confused and inarticulate processes that disclose no cause of action. There is a serious need to professionalize legal representation.

128. The right to representation, guaranteed by the Universal Declaration of Human Rights, and enshrined in the principle of equality of arms, is an essential element of the new system of administration of justice, and the role of the Office of Staff Legal Assistance should continue to be not only that of assisting staff members in processing claims but also that of representing applicants before the Tribunals.

Application of the rule of law within the United Nations

129. An apparent fundamental lack of knowledge of or concern for the principle of the rule of law results in actions being taken notwithstanding decisions as to the clear illegality of such action. It is crucial that when the Tribunal identifies a base illegality, even though staff members may have been referred to the Secretary-General, the illegality must be addressed as a matter of principle of the rule of law with possibly separate disciplinary consequences.

Retaliation against staff members for appearing before the Tribunal

130. There are clear instances of retaliation against staff members who bring actions before the Tribunal or who appear as witnesses against managers. The result is that staff members who may have genuine grievances to be litigated or those wishing to testify in their favour are discouraged from commencing applications or testifying. There is a need to treat any appearance before the Tribunal by a staff member whether as an applicant or as a witness as "protected activity".

131. The Ethics Office refuses to offer protection to staff members who were applicants before the Tribunal even when the Tribunal made such orders and there were reasons to believe that they were in danger of being retaliated against. The excuse proffered by the Ethics Office was that relevant legislation enjoined them to offer protection to whistle-blowers only.[1]

Access to justice

132. Outreach has not been conducted by the Office of Administration of Justice as it should have been. Apparently, only one outreach session has been held in the missions in South America since the inception of the new internal justice system. There are no cases coming from missions in South America and few from Asia and South-East Asia. The absence of outreach may explain why there are no cases from

[1] See *Nartey v. Secretary-General of the United Nations* (UNDT/2014/051).

that region. Bangkok had only one outreach. The staff member from the Geneva Registry who undertook it did so bearing the expense of her travel while on holiday. She was joined by a staff member of the Office of Staff Legal Assistance.

133. It is important that such outreaches are undertaken by those working in the internal justice system and not those merely administering it. It is essential that staff members be empowered through knowledge so that they may have access to justice not only for themselves but also in the interests of the Organization.

134. Sometimes, there is lack of candour on the part of the respondent in providing all relevant material to the Tribunal and to applicants even in cases in which the Tribunal by its own motion makes an order for production of documents. In the case of *Maiga*,[m] the Tribunal found that counsel for the respondent sought deliberately to mislead it by presenting her case as if the investigation report of the Office of Administration of Justice did not exist and, when ordered to produce it, made false submissions regarding the investigation findings while also omitting the annexes to the said report.

Recruitment delays

135. Delays in recruitment have been significant and detrimental to the work of the Tribunal. It was impossible to rebalance in a proper manner the imbalance in the number of cases distributed between the seats of the Tribunal because it took more than nine months from the date of resignations to recruit a P-3 legal officer and a P-5 Registrar for the New York Registry. The provision of a consultant in the P-3 position, while providing some assistance for a short while, did not address the fact that the P-4 legal officer had acted as officer-in-charge for the whole of the period and was rendered ineffective as a P-4 legal officer. His position was not back-filled for reasons unexplained.

Readiness of the judges

136. The Tribunal judges are available to discuss issues with the General Assembly and the Administration of the United Nations with a view to resolving issues mentioned in this report. During the plenary meeting in May 2017, judges met with senior Secretariat officials who showed willingness to consider some of the issues raised in this report. The Tribunal judges believe that issues will be better understood and, it is hoped, addressed soon.

A note of acknowledgment

137. The judges of the Dispute Tribunal wish to again record their appreciation of the work and dedication of the Registry staff of the Tribunal.

[m] UNDT/2015/048.

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Item 63 of the provisional agenda*
Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Question of Western Sahara

Report of the Secretary-General

Summary

The present report, covering the period from 1 July 2017 to 30 June 2018, is submitted pursuant to General Assembly resolution 72/95. It provides a summary of the most recent report submitted by the Secretary-General to the Security Council on the situation concerning Western Sahara (S/2018/277), with information on subsequent developments added where appropriate.

* A/73/150.

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1. On 7 December 2017, the General Assembly adopted, without a vote, resolution 72/95 on the question of Western Sahara. The present report, covering the period from 1 July 2017 to 30 June 2018, is submitted in accordance with paragraph 7 of that resolution.

2. The Security Council addresses Western Sahara as a matter of peace and security, calling in successive resolutions for a "mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara". The Special Political and Decolonization Committee (Fourth Committee) of the General Assembly and the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples address it as a Non-Self-Governing Territory and an issue of decolonization.

3. Pursuant to Security Council resolution 2351 (2017), the Secretary-General submitted a report to the Council on the situation concerning Western Sahara (S/2018/277) on 29 March 2018, describing the situation on the ground; the status and the progress of the political negotiations on Western Sahara; the implementation of that resolution; and the existing challenges to the operations of the United Nations Mission for the Referendum in Western Sahara (MINURSO), as well as steps taken to address them.

4. The situation in Western Sahara, as far as MINURSO was able to observe, remained generally calm during the reporting period. However, tensions between the parties, including on the unresolved issues concerning Guerguerat, as well as security concerns, continued.

5. In a letter dated 9 December 2017, the Secretary-General of the Frente Popular para la Liberación de Saguía el-Hamra y de Río de Oro (Frente Polisario), Brahim Ghali, protested inter alia that the crisis in Guerguerat had not been resolved, that no United Nations expert mission had been deployed and that no concrete action had been taken by the United Nations to implement the provisions of resolution 2351 (2017). He warned that Frente Polisario would not "accept the continuation of this state of affairs".

6. The Guerguerat area remained calm and free of the presence of elements of either party for the reporting period until late December 2017, when a small group of Frente Polisario military briefly entered the buffer strip to deliver a message to MINURSO observers to the effect that Frente Polisario would be blocking a car rally scheduled to pass through the Territory to Mauritania. As at 4 January 2018, a small group of Frente Polisario elements had established what the Frente Polisario leadership described as a daylight-hour "monitoring post" inside the buffer strip. They subsequently clarified that they would not interfere with the race, but only observe it as it passed through, which they did.

7. Morocco strongly objected to the Frente Polisario presence. On 4 January 2018, MINURSO received advance notification from Morocco of the redeployment of 260 troops from Awsard to Bir Gandouz, about two hours from Guerguerat, to secure the race if necessary. On 9 January, MINURSO was informed of the troops' return to their initial location. MINURSO maintained dialogue with both parties and increased air patrols and the hours of operation of the temporary observation post in the area.

8. On 6 January, the Secretary-General expressed deep concern about recent increased tensions in Guerguerat, calling upon the parties to exercise maximum restraint and to avoid escalating tensions. He also called for regular civilian and commercial traffic not to be obstructed and for no action to be taken that might constitute a change to the status quo of the buffer strip. In a letter addressed to the Secretary-General of Frente Polisario and Morocco dated 5 January, he requested that

the parties refrain from actions that could undermine the efforts of his Personal Envoy for Western Sahara, Horst Köhler, to relaunch the political process, while also reiterating his commitment to the peaceful resolution of the conflict.

9. On 19 May, in response to increasing tensions between the parties, the Secretary-General called for maximum restraint to be exercised, in accordance with Security Council resolution 2414 (2018), and in order to maintain an environment conducive to the resumption of dialogue under the auspices of his Personal Envoy. It was further noted that no action should be taken that might constitute a change to the status quo.

10. On 6 November 2017, King Mohammed VI delivered an address to mark the forty-second anniversary of the Green March. He stated that Morocco remained committed to engaging in the political process in the current dynamic that the Secretary-General had called for and to cooperating with the Personal Envoy. He indicated that the engagement of Morocco rested on four established principles: (a) rejection of any solution other than the full sovereignty of Morocco over Western Sahara and its autonomy proposal; (b) all parties shouldering their responsibility to find a final solution; (c) respect for the Security Council as the only international body tasked with overseeing the settlement process; and (d) rejection of any "obsolete proposals designed to divert the settlement process from the set terms of reference". Morocco would not sit by and wait for the desired solution to be found, but rather press ahead with its endeavours to promote development in "[its] southern regions", including enabling them to be a link between Morocco and countries further south in Africa. Media reported that Frente Polisario had denounced the speech as a "denial of Morocco's commitments under the peace process".

11. On 16 August 2017, the Secretary-General announced his decision to appoint Horst Koehler (Germany) as his Personal Envoy, to replace Christopher Ross (United States of America), whose mandate had ended on 30 April. Mr. Koehler took up his functions on 8 September. The appointment was welcomed by the parties and neighbouring States, who pledged to support his efforts.

12. From 15 to 24 October, the Personal Envoy undertook his first visit to the region. He travelled to Rabat, Rabouni (Algeria), Tindouf (Algeria), Algiers and Nouakchott. In Rabat, he was received by King Mohammed VI, who welcomed the appointment and expressed his commitment to the negotiating process. The Prime Minister, Saadeddine Othmani, also expressed his support for the efforts of the Personal Envoy to resolve the conflict. The Minister for Foreign Affairs and International Cooperation of Morocco, Nasser Bourita, reiterated his country's continued commitment to a political solution to the conflict which is based on the Moroccan autonomy initiative of 2007. He stressed that the resolution of the conflict in Western Sahara would require Algeria to take on a more important role.

13. In Rabouni, the Personal Envoy met the Secretary-General of Frente Polisario, who reiterated the movement's unconditional commitment to a peaceful resolution of the conflict, while highlighting the suffering of the Sahrawi people, in particular the youth and those living in refugee camps. He called upon Morocco to return to the negotiation table without preconditions. The Personal Envoy also met the members of the Frente Polisario leadership, and representatives of women and youth.

14. During a visit to the Awsard refugee camp near Tindouf, the Personal Envoy witnessed the profound frustrations and emotions of a refugee population that continues to endure the consequences of a conflict that has lasted for far too long.

15. In Algiers, the Personal Envoy met the President of Algeria, Abdelaziz Bouteflika, the Prime Minister, Ahmed Ouyahia, and the Minister of State and Minister of Foreign Affairs, Abdelkader Messahel. The President emphasized his

country's continued support for any peaceful solution that was acceptable to Frente Polisario and respected their right to self-determination. In Nouakchott, my Personal Envoy met the President of Mauritania, Mohamed Ould Abdel Aziz, the Prime Minister, Yahya Ould Hademine, and the Minister for Foreign Affairs and Cooperation, Isselkou Ould Ahmed Izid Bih. All interlocutors reiterated the long-standing position of Mauritania of "positive neutrality", as well as their willingness to fully support the efforts of the Personal Envoy.

16. On 22 November, the Personal Envoy briefed the Security Council on his first visit to the region. He expressed cautious optimism, observing that he had witnessed a "certain yearning" for a solution among all interlocutors. Since his briefing to the Council, he has continued his dialogue with the leadership of the parties and neighbouring States. On 14 December, in substantively identical letters, he extended invitations to the parties to the conflict and the neighbouring States to hold bilateral in-depth consultations, to which they all responded positively.

17. Thus, on 25 and 26 January 2018, the Personal Envoy met the Secretary-General of Frente Polisario in Berlin. On 6 March, he held consultations with the Minister for Foreign Affairs and International Cooperation of Morocco in Lisbon. On 8 February, he met the Minister for Foreign Affairs and Cooperation of Mauritania in Berlin, and on 15 February, the Minister of State and Minister of Foreign Affairs of Algeria, also in Berlin.

18. The Personal Envoy also continued his consultations with the members of the Group of Friends on Western Sahara, namely, France, the Russian Federation, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States, as well as other interested stakeholders. From 9 to 18 January, he travelled to Addis Ababa, Brussels, Kigali, London and Paris to meet government representatives and interlocutors of the African Union and the European Union, including the Chairperson of the African Union Commission, Moussa Faki Mahamat, and the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, Federica Mogherini.

19. Public life in the refugee camps near Tindouf remained peaceful and free of major incidents, although frustrations continued among refugees about the stalemate in the political process. The steady decrease in humanitarian aid to the refugees remained of concern. A donor appeal was issued by the United Nations Resident Coordinator in Algeria in October 2017, with one already having been made by the World Food Programme in May. In July 2017, heavy winds caused damage to over 100 household shelters and a number of education facilities in the Dakhla refugee camp, resulting in a small number of injuries.

20. The Office of the United Nations High Commissioner for Refugees (UNHCR) and its partners continued to provide international protection and assistance to Sahrawi refugees living in the five camps near Tindouf. However, the consequences of underfunding on life-saving humanitarian assistance and the regular refugee programme were clearly visible. For example, UNHCR could provide an average of only 18 litres of drinking water per person per day, which is below the minimum standard of 20 litres. For humanitarian planning purposes, UNHCR deployed a technical mission in January 2018 to review the Sahrawi in-camp population figure on the basis of sectoral data.

21. From 22 to 28 October 2017, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment visited Morocco to advise the Government on establishing a national detention monitoring body to inspect places of detention. During its visit, the Subcommittee assessed the treatment of persons deprived of liberty and the measures taken for their protection. During the

reporting period, Frente Polisario expressed readiness to cooperate with United Nations human rights mechanisms.

22. Landmines and other explosive remnants of war continue to endanger the lives of MINURSO military observers, civilian personnel and logistical convoys. As at 1 March 2018, 54 known cluster strike areas and 22 known minefields remained to be addressed east of the berm. Since its relocation on 1 September 2016, the MINURSO Mine Action Coordination Centre has operated from Tindouf.

23. On 1 December 2017, the Secretary-General announced the appointment of Colin Stewart (Canada) as his new Special Representative for Western Sahara and Head of MINURSO, to succeed Kim Bolduc (Canada), who had completed her assignment on 22 November.

24. As at 1 July 2017, owing to a direct threat of kidnapping against international personnel received in late June, patrolling east of the berm was restricted to a 100-kilometre radius from team sites. Normal patrolling activities continued west of the berm. Night operations on both sides of the berm remained suspended. MINURSO also immediately implemented additional precautionary measures and accelerated the reinforcement of the physical and operational security infrastructure at all nine team sites. In its budget for the period from 1 July 2018 to 30 June 2019 (A/72/731), the Mission proposed the acquisition of protective bunkers for all team sites east of the berm.

25. On 27 April 2018, the Security Council adopted resolution 2414 (2018), with 12 votes in favour and 3 abstentions (China, Ethiopia and Russian Federation). The Council thus extended the mandate of MINURSO for six months until 31 October 2018, emphasized the need to make progress towards a realistic, practicable and enduring political solution and called upon the parties to resume negotiations without preconditions and in good faith. It affirmed its full support for the intention of the Personal Envoy to relaunch the negotiations.

26. In June, an independent review of MINURSO was launched as part of the comprehensive review of peacekeeping operations that the Secretary-General initiated in late 2017. The review is expected to be completed in August.

27. Following the adoption of resolution 2414 (2018), the Personal Envoy undertook his second visit to the region, from 23 June to 1 July. He travelled to Algiers, Tindouf, Rabouni, Nouakchott, Rabat, Laayoune, Smara and Dakhla. The findings of the visit will be included in the report submitted to the Security Council pursuant to resolution 2414 (2018).

28. The Secretary-General is encouraged by the steps taken by his Personal Envoy to relaunch the political process since his appointment, and he welcomes his visit to the region. While all stakeholders reiterated long-held positions, the Secretary-General is encouraged that the Personal Envoy was able to hold discussions at the highest level throughout the region. The numerous private and public expressions of support for those efforts are also an important signal that a new dynamic is already in play.

29. To maintain the positive momentum, additional steps need to be taken by the parties, neighbouring countries and other relevant interlocutors. In its resolutions since the beginning of 2007, the Security Council has directed the Secretary-General to facilitate direct negotiations between the parties without preconditions, in good faith, taking into account the efforts made since 2006 and subsequent developments, working with realism and a spirit of compromise. The Council has also called upon the parties to show political will, work in an atmosphere favouring dialogue and discuss each other's proposals to prepare for a fifth round of formal negotiations. The Secretary-General calls upon the parties to continue to work with his Personal Envoy

in that new spirit and dynamic and to genuinely commit themselves to the negotiating process in accordance with the guidance provided by the Council in its resolutions.

30. The conflict over Western Sahara has lasted for far too long and must be brought to an end for the sake and the dignity of the population, including those who have been displaced for more than four decades, as well as for the stability of the wider region, which is facing myriad political, economic and security challenges. In that regard, the work of the Personal Envoy, MINURSO and of the United Nations agencies remains indispensable.

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United Nations 2018 flagship report on disability and development: realization of the Sustainable Development Goals by, for and with persons with disabilities

Note by the Secretariat

Summary

The present note provides an overview of the United Nations 2018 flagship report on disability and development and the preliminary findings described in the report. The full report, requested by the General Assembly in its resolution 69/142, will be issued online on 3 December 2018.

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I. Introduction

1. In its resolution 69/142, entitled "Realizing the Millennium Development Goals and other internationally agreed development goals for persons with disabilities towards 2015 and beyond", the General Assembly requested the Secretary-General, in coordination with all relevant United Nations entities, to compile and analyse national policies, programmes, best practices and available statistics regarding persons with disabilities, reflecting progress made in addressing the relevant internationally agreed development goals and the provisions of the Convention on the Rights of Persons with Disabilities, to be submitted to the General Assembly in a flagship report during 2018. The 2018 flagship report on disability and development and the realization of the Sustainable Development Goals by, for and with persons with disabilities will be issued in response to that mandate.

2. The purpose of the report is to contribute to the full and effective implementation of the 2030 Agenda for Sustainable Development and enhance the current efforts to mainstream the needs, rights and perspectives of persons with disabilities into the process of achieving the Sustainable Development Goals at all levels. In particular, the report provides an overview of overall progress towards the Goals and the implementation of the Convention on the Rights of Persons with Disabilities and presents good practices and policy trends in the respective areas. It will be the first publication on disability and the Goals at the global level. The following Goals are addressed in detail: poverty and hunger (Goals 1 and 2), social protection (target 1.3), health and well-being (Goal 3), education (Goal 4), gender equality and the empowerment of women and girls with disabilities (Goal 5), availability of water and sanitation (Goal 6), access to energy (Goal 7), employment and decent work (Goal 8), access to information and communications technology (ICT) (target 9.c), inequality (Goal 10), inclusive cities and human settlements (Goal 11), inclusive societies and institutions, representative decision-making and access to justice and to information (Goal 16) and strengthening the means of implementation (Goal 17).

3. The Department of Economic and Social Affairs of the Secretariat collaborated with experts from United Nations agencies, international financial institutions, Member States, academia, research institutions, foundations, the private sector and non-governmental organizations, especially organizations of persons with disabilities, to produce the report. Five expert group meetings were organized to contribute to the preparation of the report. Various sources of evidence, repositories of national and best practices and numerous disability data sets were compiled and analysed, including those of the Demographic and Health Surveys,[1] the Economic Commission for Latin America and the Caribbean (ECLAC), the Economic and Social Commission for Western Asia (ESCWA), the Economic and Social Commission for Asia and the Pacific (ESCAP), Eurostat, the International Labour Organization (ILO), Integrated Public Use Microdata Series, International,[2] SINTEF,[3] the Statistics Division of the Department of Economic and Social Affairs, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Children's Fund (UNICEF) and the World Health Organization (WHO).

[1] ICF International, Demographic and Health Surveys, various data sets from 2009 to 2015.

[2] Minnesota Population Center, Integrated Public Use Microdata Series, International, various data sets from 2001 to 2012. Data available at https://international.ipums.org/international/.

[3] SINTEF, studies on living conditions among persons with disabilities, various data sets from 2004 to 2015.

4. The present note focuses on selected Sustainable Development Goals and provides an overview of the preliminary findings of the report. The note ends with a discussion of the way forward for disability-inclusive sustainable development.

II. Realization of the Sustainable Development Goals by, for and with persons with disabilities

5. In 2015, Member States adopted the 2030 Agenda for Sustainable Development, including a set of 17 Sustainable Development Goals to be achieved by 2030. Disability has been included in various targets and as a cross-cutting issue in the Agenda. Efforts need to be stepped up to ensure that the goals and targets will be achieved for persons with disabilities too, in line with the Convention on the Rights of Persons with Disabilities, which was adopted in 2007 and as of June 2018 has been ratified by 177 States.

6. The sections below provide an overview of selected Sustainable Development Goals from a disability perspective; they address relevant international normative frameworks, the current situation of persons with disabilities, national policy trends and good practices, with the aim of informing on progress made in the implementation of the 2030 Agenda for persons with disabilities.

A. Ending poverty and hunger for all persons with disabilities (Goals 1 and 2)

7. The eradication of poverty and hunger represents key commitments under Sustainable Development Goals 1 and 2. Poverty is also a concern under article 28 of the Convention on the Rights of Persons with Disabilities, in which States parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families and commit to ensuring access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes.

8. However, persons with disabilities and their households are still more likely to live in poverty owing to various barriers in society, such as discrimination, limited access to education and employment and a lack of participation in livelihood and other social programmes. Increased expenditures related to disability could exacerbate the situation. Based on data from 22 countries around 2008, multidimensional poverty rates[4] for persons with disabilities were on average 15 percentage points higher than those of persons without disabilities.[5, 6, 7, 8, 9] Data on income poverty disaggregated by disability are lacking in many countries, but studies conducted among eight countries from 2010 to 2015 showed that the proportion of

[4] Multidimensional poverty refers to the experience of multiple deprivations in different domains, such as educational attainment, employment and living conditions.

[5] Debra L. Brucker and others, "More likely to be poor whatever the measure: working-age persons with disabilities in the United States", *Social Science Quarterly*, vol. 96, No. 1 (2014), pp. 273–296.

[6] Sophie Mitra, Aleksandra Posarac and Brandon Vick, "Disability and poverty in developing countries: a multidimensional study", *World Development*, vol. 41 (2013), pp. 1–18.

[7] Sophie Mitra, *Disability, Health and Human Development* (New York, Palgrave MacMillan, 2018).

[8] Jean-Francois Trani and others, "Disability and poverty in Morocco and Tunisia: a multidimensional approach", *Journal of Human Development and Capabilities*, vol. 16, No. 4 (2015).

[9] Jean-Francois Trani and others, "Multidimensional poverty in Afghanistan: who are the poorest of the poor?", *Oxford Development Studies*, vol. 44, No. 2 (2016), pp. 220–245.

persons with disabilities living under the national or international poverty line was higher than that of persons without disabilities. The gap reached 20 percentage points in some countries.[5,7,10]

9. Besides experiencing higher poverty rates, persons with disabilities are more likely to live in food-insecure households. The inability to afford a meal with protein every second day is higher among persons with disabilities than among persons without disabilities. Among 35 countries[11] in 2016, the average percentage of persons with disabilities who were unable to afford such a meal was almost double that of persons without disabilities: 17 per cent and 10 per cent, respectively. More women than men with disabilities face this challenge, and the gender gap between women and men is wider among persons with disabilities.[12]

10. Social protection schemes help to prevent, manage and overcome situations that adversely affect a person's well-being. Since the 1960s, an increasing number of countries have adopted social protection programmes for persons with disabilities, reaching 179 countries in 2012 and 2013. In 168 countries, disability schemes provide periodic cash benefits to persons with disabilities, while in another 11 countries, only lump-sum benefits are provided. In 81 countries, benefits cover mainly workers and their families in the formal economy and thus leave out children with disabilities and persons with disabilities who did not have the opportunity to contribute to social insurance long enough to be eligible for benefits. A total of 87 countries use schemes that are fully or partially financed through taxes and thus have improved coverage. In 27 countries, schemes cover all persons with assessed disabilities without regard to their income status; in 60 countries, they protect only persons or households whose economic means fall below a certain threshold. Apart from the challenges posed by these conditionalities, access to social protection programmes can be restricted by other barriers,[13] such as lack of knowledge on how to apply for benefits, absence of documentation, limited accessibility of grant offices for persons with disabilities, lack of clarity in the disability evaluation process and discrimination by staff of grant offices towards certain types of disabilities, particularly intellectual disabilities.[14]

11. Financial inclusion can contribute to giving persons with disabilities access to economic opportunities and helping them to escape poverty. However, persons with disabilities report difficulties in using financial services independently owing to accessibility constraints. In five developing countries, on average 37 per cent of persons with disabilities consider banks inaccessible.[3] Crowdsourced data mostly from developed countries indicated that, in 2017, 28 per cent of banks and 12 per cent of automated teller machines were not accessible.[15,16]

B. Ensuring healthy lives and promoting well-being (Goal 3)

12. Sustainable Development Goal 3 calls for ensuring healthy lives and promoting well-being for all. The achievement of the Goal for persons with disabilities builds

[10] ESCAP, *Building Disability-inclusive Societies in Asia and the Pacific: Assessing Progress of the Incheon Strategy* (United Nations publication, Sales No. E.18.II.F.4).

[11] Of the 35 countries, 34 are in Europe.

[12] Eurostat database (accessed from March to May 2018).

[13] ILO, *World Social Protection Report* 2014/15: *Building Economic Recovery, Inclusive Development and Social Justice* (Geneva, 2014).

[14] Lauren Graham, Jacqueline Moodley and Lisa Selipsky, "The disability-poverty nexus and the case for a capabilities approach: evidence from Johannesburg, South Africa", *Disability and Society*, vol. 28, No. 3 (2013), pp. 324–337.

[15] Sozialhelden, accessibility.cloud. Available at www.accessibility.cloud (accessed in December 2017).

[16] Based on data from over 9,000 banks and over 20,000 automated teller machines.

on various international frameworks responding to the need to secure access to health-care services for persons with disabilities. This includes the Convention on the Rights of Persons with Disabilities, article 25 of which stipulates providing the same quality and standard of affordable health-care services and programmes to persons with disabilities as provided to other persons, and article 26 stipulates strengthening comprehensive habilitation and rehabilitation services and programmes.

13. Persons with disabilities are at greater risk of developing secondary health conditions such as depression, pain and osteoporosis[17] and are faced with more challenges to gaining access to health care. Thus, they are more likely to have poor health than others. In 38 countries, in 2015 and 2016, health was self-perceived as very good or good by an average of 20 per cent of persons with disabilities, compared with 82 per cent of persons without disabilities. Moreover, 38 per cent of persons with disabilities perceived their health as bad or very bad, compared with 2 per cent of persons without disabilities. Women with disabilities tended to report poorer health than men with disabilities. The lower the gross domestic product per capita of a country, the higher the proportion of persons with disabilities who reported poor health.[12,18,19] Regarding tobacco use, data from 15 European countries suggest that daily tobacco use is less of a problem among persons with disabilities (19 per cent of persons with disabilities reported smoking daily, compared with 26 per cent of persons without disabilities).[12]

14. Access to health-care services remains a challenge for persons with disabilities, who are more than three times as likely as persons without disabilities to be unable to get health care when they need it. Barriers include lack of financial resources and inaccessible public transport and facilities.[12,18,20] In some developing countries, more than 30 per cent of persons with disabilities report that hospitals and primary health-care facilities are not accessible.[3]

15. To address those challenges, countries have tended to make legal and policy reforms and/or to address access to health-care services directly. Based on a review of national laws and policies,[21] six basic approaches can be identified: (a) constitutional or human rights act provisions of general application regarding disability; (b) anti-discrimination laws and regulations of general application; (c) anti-discrimination laws and regulations with reference to the health sector; (d) national, non-constitutional laws targeting provision of and access to health care; (e) national disability laws or policy plans; and (f) laws guaranteeing access to health care for specific health conditions, such as spinal cord injuries, or specific populations, such as veterans. Although approaches (a), (b) and (c) are very common, they do not explicitly target any disability-specific barriers; at best, they give a person with disabilities the option of launching legal action against the State. Approaches (e) and (f) are common, but only six countries use approach (d) and have a law guaranteeing access to health care for persons with disabilities.

[17] WHO and World Bank, *World Report on Disability* (2011).

[18] Model disability surveys in Cameroon, Chile and Sri Lanka, 2015–2016. Data provided by WHO in April 2018.

[19] World Bank data. Available at https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD (accessed in May 2018).

[20] Based on data from 37 countries.

[21] Disability Rights Education and Defense Fund, "International laws". Available at https://dredf.org/legal-advocacy/international-disability-rights/international-laws/4 (accessed in August 2017).

C. Ensuring inclusive and equitable quality education (Goal 4)

16. Education is considered a fundamental human right and a condition necessary to enhancing individual development and effective participation in society. The Universal Declaration of Human Rights (1948) states that everyone has the right to education (art. 26). This guarantee was strengthened following the adoption of the Convention against Discrimination in Education (1960), the first legally binding international instrument outlining core elements of the right to education. In article 24 of the Convention on the Rights of Persons with Disabilities, States parties recognize the right of persons with disabilities to education, and, in article 9 thereof, they commit to ensuring the elimination of obstacles and barriers to accessibility in schools. Sustainable Development Goal 4 calls for ensuring inclusive quality education for all, and targets 4.5 and 4.a include ensuring equal access to all levels of education and vocational training for persons with disabilities and building and upgrading disability-sensitive education facilities, respectively.

17. Persons with disabilities are less likely to attend school and complete primary education and more likely to be illiterate. Around 2010, on average, only 77 per cent of persons with disabilities aged 15 to 29 had ever attended school, compared with 87 per cent of persons without disabilities of the same age.[2,22,23] Data from six developing countries indicated that on average one in three children with disabilities of primary school age was out of school, compared with one in seven children without disabilities. In these same countries, the primary school completion rate was 56 per cent for children with disabilities and 73 per cent for children without disabilities.[1] The average literacy rate of persons with disabilities who are 15 years and older is 56 per cent, against 74 per cent for persons without disabilities.[2,24]

18. Many countries made efforts to strengthen national legal frameworks and devise policies to ensure improved access to education for persons with disabilities. Of the 193 Member States, 34 guarantee in their constitutions the right to education for persons with disabilities or provide protection against discrimination based on disability in education. In terms of inclusive education, around 2013, students with disabilities could be taught in the same classroom as other students in only 44 per cent of Member States. In 39 per cent of the countries, students with disabilities may attend the same schools but not necessarily be in the same classrooms as other students; in 12 per cent of the countries, students with disabilities are sent to separate schools, and in 5 per cent of the countries, children with disabilities receive no additional support in public education to meet their needs.[25] Progress has, however, been made in recent years and, as at 2017, an increased number of countries provided appropriate materials (41 per cent of countries), adequate human resources (33 per cent of countries) and physical environments (33 per cent of countries) for students with disabilities in schools.[26] Out of more than 30,000 education facilities analysed in various countries (mostly developed countries), only 47 per cent were considered accessible for persons using wheelchairs.[15]

19. Other practical measures adopted by countries to encourage the inclusion of students with disabilities include free and compulsory education for students with

[22] School-to-work transition surveys, 2012–2016. Data provided by UNESCO.

[23] Based on data from 37 countries and territories from developing regions, 2006–2015.

[24] Based on data from 25 countries, 2005–2011.

[25] World Policy Analysis Center, Disability Data. Available at www.worldpolicycenter.org/maps-data/data-download/disability-data (accessed in October 2017).

[26] Data from 80 countries provided by UNICEF in 2017.

disabilities,[27] financial assistance,[28] providing Braille textbooks, allowing extra time for entrance exams, assignment of assistant teachers,[29] training teachers to enhance their understanding and teaching methods on inclusive education[30] and educating students without disabilities about disability.[31]

D. Achieving gender equality and empowering all women and girls with disabilities (Goal 5)

20. Sustainable Development Goal 5 calls for achieving gender equality and empowering all women and girls. The need to incorporate a gender perspective into all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities is emphasized in the Convention on the Rights of Persons with Disabilities. The Convention includes, as one of its general principles, the need to ensure equality between women and men, and a stand-alone article (art. 6) on women with disabilities. Women with disabilities are also protected by normative frameworks safeguarding and advancing the rights of women, such as the Convention on the Elimination of All Forms of Discrimination against Women (1979) and the Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, in 1995. While the Convention on the Elimination of All Forms of Discrimination against Women does not make explicit reference to women and girls with disabilities, the Beijing Declaration and Platform for Action identify actions to ensure the empowerment of women with disabilities in various areas, including equal access to appropriate education and skills training, health programmes and services that address the special needs of women with disabilities, improvement of their work opportunities, equity and positive action programmes to address systemic discrimination against women with disabilities in the labour force, and improvement of concepts and methods of data collection on the participation of women and men with disabilities, including their access to resources.

21. Women with disabilities are often subjected to multiple forms of discrimination, owing to their gender and disability status, and continue to be at a disadvantage in most spheres of society and development. Compared with men without disabilities, women with disabilities are: three times more likely to have unmet health-care needs;[12,18,32] two times more likely to be unemployed or inactive in the labour market;[2,12,33,34] three times more likely to be illiterate;[2,35] and four times less[36] likely to work as legislators, senior officials or managers.[2,37] There is also evidence indicating that women with disabilities are four times more likely to suffer sexual violence.[38] With regard to early marriage, girls with and without disabilities tend to

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[27] Kye-Ok Kim, "Inclusive education in the Republic of Korea", paper for the Regional Preparatory Workshop on Inclusive Education, East Asia, Hangzhou, China, 3–5 November 2007.

[28] UNESCO, *The Right to Education for Persons with Disabilities: Overview of the Measures Supporting the Right to Education for Persons with Disabilities Reported by Member States* (Paris, 2015).

[29] Inclusive Education in Action, "Providing Braille materials to support inclusion in Japan".

[30] Inclusive Education in Action, "Cooperative teaching for inclusion". Available at www.inclusive-education-in-action.org/iea/index.php?menuid=25&reporeid=173.

[31] Inclusive Education in Action, "Exploring the use of 'Kids on the Block' puppet programmes to raise awareness of autism and deafness in primary schools".

[32] Based on data from 37 countries.

[33] ILO disability database. Data provided by ILO, 2017–2018.

[34] Based on data from 66 countries.

[35] Based on data from 37 countries provided by UNESCO.

[36] ESCWA, "Arab disability statistics in numbers 2017". Available at www.unescwa.org/sub-site/arab-disability-statistics-2017 (accessed in May 2018).

[37] Based on data from 10 countries.

[38] Uganda Demographic and Health Survey, 2016.

be similarly affected, with girls with disabilities slightly less likely to be married before age 15 in 11 out of 15 countries.[2]

22. With respect to disability-inclusive gender policies, an analysis of the national plans of 20 countries to address gender inequalities and/or violence against women in Latin America and the Caribbean indicated that 17 of the 20 countries mentioned disability in their gender national plans, 12 had gender plans with measures targeting women with disabilities and only 6 out of 19 countries addressed gender in their disability laws.[39]

E. Ensuring availability of water and sanitation (Goal 6)

23. Under Sustainable Development Goal 6, States commit to achieving universal and equitable access to safe and affordable drinking water for all. The need to pay attention to people in vulnerable situations, implying the inclusion of persons with disabilities, is underscored in target 6.2. In article 28 of the Convention on the Rights of Persons with Disabilities, States parties commit to ensuring equal access to clean water services for persons with disabilities. Similarly, access to water and sanitation services and the equal rights of persons with disabilities are mentioned in the Programme of Action for the Least Developed Countries for the Decade 2011–2020.[40]

24. Accessibility and inclusive design are increasingly becoming the norm in many countries, but persons with disabilities, particularly those living in developing countries, face barriers in access to water, sanitation and hygiene, including physical, institutional, social and attitudinal barriers.[41] For example, in Chile and Sri Lanka, approximately one out of five persons with a severe disability considers the toilet hindering or very hindering. In Cameroon, about every second person with a severe disability considers the toilet hindering or very hindering.[18] In Brazil, in 2016, 97 per cent of primary schools had a toilet in the building but, despite considerable progress since 2009, only 46 per cent had a sanitation facility accessible to pupils with disabilities or reduced mobility.[42] Moreover, persons with disabilities are less likely to live in households with access to improved water and sanitation. In some countries, the gap between households of persons with and those without disabilities is over 10 percentage points in terms of access to both improved water and sanitation.[43]

25. Assistive technologies, such as specially designed handles for water pumps or toilets, installing ramps and handrails and widening doors that are designed for persons with disabilities, help in making water, sanitation and hygiene accessible. For instance, in Mali, a communal well in a village was redesigned, in consultation with persons with disabilities, to include a high wall to protect persons who are blind from falling, and a physical support was installed for lifting water. One section of the wall was lowered and a concrete ramp was developed for wheelchair users.[41] In Nepal, moveable toilet seats were provided to rural households that had latrines, which

[39] Maria Veronica Reina, "Regional trends: women with disabilities in Latin America", presentation at the expert group meeting on advancing the rights and perspectives of women and girls with disabilities in development and society, Santiago, 15–17 November 2016.

[40] A/CONF.219/7, chap. II, para. 87 (1) (c).

[41] Hazel Jones, Julie Fisher and Robert Reed, "Water and sanitation for all in low-income countries", Proceedings of the Institution of Civil Engineers, *Municipal Engineer*, vol. 165, No. ME3 (September 2012), pp. 167–174.

[42] WHO/UNICEF, Joint Monitoring Programme for Water Supply, Sanitation and Hygiene, analysis based on data from the National Institute for Educational Studies and Research of Brazil, 2000–2016.

[43] Based on data for 34 countries from the World Health Survey, 2002–2004.

helped persons with disabilities having leg and/or back problems, and reduced the need to sit or crawl on a wet latrine floor.[44]

F. Ensuring access to energy (Goal 7)

26. Access to energy has long been discussed in the context of sustainable development and the well-being of individuals, but persons with disabilities have been invisible in the discourse. The call for energy access for all, which implicitly includes persons with disabilities, was made in the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want", as well as in Goal 7, in which the critical role that energy plays in the development process is recognized. Access to energy is vital for persons with disabilities, many of whom require electricity to operate assistive technology for independent living. Out of the 50 priority assistive products identified by WHO,[45] almost half require electricity. In many developing countries, households with persons with disabilities are less likely to have access to electricity than those without persons with disabilities. In several countries, less than 20 per cent of households with persons with disabilities have access. The gap in energy access between the two types of households can reach 10 percentage points or more in some countries and is wider in countries with less than 70 per cent electricity access.[1,3,18,2,46] In countries facing low winter temperatures, in 2015 and 2016, persons with disabilities were less likely to be able to keep their homes warm, especially women with disabilities. In some countries, this affects more than 30 per cent of persons with disabilities.[12,47]

27. Affordability and exposure to indoor pollution from non-clean energy sources are also particular challenges for persons with disabilities. Longer periods spent at home and the use of electricity-dependent assistive technology can lead to higher electricity consumption, which results in higher energy bills, and persons with disabilities have more difficulties in paying energy bills because of lower income (see Goal 8). Since persons with disabilities tend to spend longer periods at home, they are more likely to be exposed to indoor pollution from traditional fuels, such as biomass and coal. Access to reliable, affordable and clean energy is therefore crucial for the well-being of persons with disabilities.

28. Some Member States are addressing these challenges by providing financial support for energy bills and enhancing access to clean energy. For example, in the United Kingdom of Great Britain and Northern Ireland, the Government provides financial support to persons with disabilities for adjusting room temperature in winter and summer.[48,49] In a refugee camp in Kenya, energy-efficient stoves were distributed, with the selection of beneficiaries focusing on persons with disabilities and other vulnerable groups.[50]

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[44] Guna Raj Shrestha, "Case study on addressing sanitation needs of disabled people in Nepal", Nepal Water for Health, January 2006.

[45] WHO, "Priority Assistive Products List". Available at: www.who.int/phi/implementation/assistive_technology/global_survey-api/en/.

[46] Based on data from 44 countries.

[47] Based on data from 35 countries.

[48] United Kingdom, "Cold weather payment". Available at www.gov.uk/cold-weather-payment/eligibility.

[49] United Kingdom, "Warm home discount scheme". Available at www.gov.uk/the-warm-home-discount-scheme/eligibility.

[50] Office of the United Nations High Commissioner for Refugees, "Dadaab refugee camps, Kenya: solar energy and energy efficiency", September 2014.

G. Promoting full and productive employment and decent work for persons with disabilities (Goal 8)

29. Sustainable Development Goal 8 calls for promoting inclusive and sustainable economic growth and decent work for all. Persons with disabilities are mentioned explicitly in target 8.5 as persons to be included in the goal to achieve full and productive employment and decent work for all. Article 27 of the Convention on the Rights of Persons with Disabilities calls for the prohibition of discrimination on the basis of disability in employment and for the protection of the rights of persons with disabilities to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, and safe and healthy working conditions. These provisions are echoed in Human Rights Council resolution 22/3 on the work and employment of persons with disabilities, in which the Council called upon States parties to ensure that persons with disabilities enjoy the right to work on an equal basis with others, including by, inter alia, prohibiting discrimination, increasing employment, promoting entrepreneurship, eliminating barriers that hinder job seekers from access to the workplace and ensuring reasonable accommodation.

30. Lower rates of employment are persistently observed for people with disabilities. Based on 91 countries, the employment-to-population ratio of persons with disabilities aged 15 and older is 36 per cent on average, whereas the ratio of persons without disabilities is 60 per cent. The ratio among persons with disabilities varies from 7 per cent to 69 per cent.[2,3,10,12,33,36,51] Women with disabilities are less likely to be employed than men with disabilities, but the average gender gap in the employment-to-population ratio of persons with disabilities aged 15 and older is 11 per cent, compared with 20 per cent for persons without disabilities.[51,52] Employed persons with disabilities tend to earn lower wages than persons without disabilities. Wage gaps wider than 10 per cent have been reported.[53,54,55,56] Lack of accessibility and reasonable accommodation can pose further obstacles. In eight developing countries, an average of 32 per cent of persons with disabilities report that their workplace is hindering or not accessible.[17]

31. An affirmative action measure used frequently by countries to promote the employment of persons with disabilities is a quota system, which obliges employers to hire a certain number or percentage of persons with disabilities. More than 100 countries have established such quota systems, with quota levels mostly varying between 1 per cent and 15 per cent.[57] The most effective quota systems include the payment of a levy by the non-complying company for every position not held by a person with a disability. These levies typically contribute to a special fund used to finance measures promoting the employment of persons with disabilities.

32. Some countries developed national employment policies with a provision for ensuring the right of persons with disabilities to equal employment opportunities.[58] A total of 22 countries have included provisions in their constitutions explicitly guaranteeing the right to work for persons with disabilities or prohibiting employment

[51] Based on data from 2006 to 2016.

[52] Based on data from 66 countries and territories.

[53] Based on data from three countries.

[54] National Statistics Institute of Spain, "El salario de las personas con discapacidad: 2015" (Salary of persons with disabilities: 2015).

[55] United States, Census Bureau, 2011 American Community Survey Estimates.

[56] Chile, Ministry of Social Development, National Social and Economic Survey 2015. Available at http://observatorio.ministeriodesarrollosocial.gob.cl/documentos/Casen2013_inclusion_social.pdf.

[57] Data compiled by ILO and the Department of Economic and Social Affairs.

[58] ILO, "Inclusion of people with disabilities in national employment policies", September 2015.

discrimination against persons with disabilities.[25] National programmes were launched in some countries to promote the inclusion of persons with disabilities in mainstream technical and vocational education and training systems, such as financial assistance for vocational training and materials and the development of national guidelines for the inclusion of persons with disabilities in such systems.[59,60]

H. Increasing access to information and communications technology (target 9.c)

33. Sustainable Development Goal 9 calls for building resilient infrastructure, with a focus on affordable and equitable access for all (target 9.1). The need to increase access to ICT and to provide universal and affordable access to the Internet is underscored in target 9.c. Access for persons with disabilities has been addressed in the Convention on the Rights of Persons with Disabilities, in which States parties, in article 9, commit to taking measures to ensure equal access to ICTs and systems for persons with disabilities, including electronic and emergency services. In the International Telecommunication Regulations of 2012, States members of the International Telecommunication Union are called upon to promote access for persons with disabilities to international telecommunication services. These frameworks build on the Geneva Plan of Action, of 2003, and the Tunis Commitment, of 2005, both of which were adopted at the World Summit on the Information Society, in which participants pledge to promote universal, equitable and affordable access to ICTs, including universal design and assistive technologies, for all, including persons with disabilities.

34. Despite these calls and commitments, persons with disabilities remain less likely to have access to ICTs than persons without disabilities. There is a significant gap between persons with and without disabilities in the use of the Internet, with persons with disabilities reporting lower usage. Among 13 developing countries, around 2011, the average gap was 12 percentage points, with some countries reaching gaps as high as 30 percentage points.[1,61,62] These large gaps may be due to the lack of accessibility of such technology as well as the lower capacity of households with persons with disabilities to afford the costs of Internet access. Data available for three sub-Saharan countries indicate that 15 per cent of households without persons with disabilities, but only 8 per cent of households with persons with disabilities, are able to afford Internet costs.[3] Households with persons with disabilities are also less likely to have a computer (11 per cent of households with persons with disabilities, compared with 16 per cent of households without persons with disabilities).[1,2,3,63]

35. Many Member States initiated programmes and policies to promote equal access to ICT for persons with disabilities, which include captioning or signing of television programmes, ensuring accessible government websites, accessible public electronic kiosks or automated teller machine and providing telephone services for persons who are deaf and/or speech impaired.[64] Some Member States have created laws requiring government websites to comply with the Web Content Accessibility Guidelines[65] of the World Wide Web Consortium, and the European Commission has adopted the Web

[59] ILO, *TVET Reform: Designing an Inclusive Skills Development Programme* (2012).

[60] ILO, "Making TVET and skills systems inclusive of persons with disabilities", policy brief, September 2017.

[61] Census data compiled by ECLAC.

[62] Based on data from 13 developing countries.

[63] Based on data from 40 countries.

[64] Global Initiative for Inclusive Information and Communication Technologies, "Convention on the Rights of Persons with Disabilities: 2013 ICT accessibility progress report" (2014).

[65] Available at www.w3.org/WAI/standards-guidelines/wcag/#for.

Content Accessibility Guidelines 2.0 as a European government standard.[66] In Latin America and the Caribbean, ICT and persons with disabilities are mentioned in the general disability law in 13 countries and are a provision of the general telecommunication law in 6 countries. Most of this legislation refers to the right of access for persons with disabilities or to ensuring technologies that are in accessible formats.[67]

I. Reducing inequality (Goal 10)

36. Sustainable Development Goal 10 calls for reducing inequality within and among countries. The aim in target 10.2 is to empower and promote the social, economic and political inclusion of all, irrespective of disability, while that in target 10.3 is to ensure equal opportunity and reduce inequalities of outcome. Aligning the implementation of Goal 10 with the Convention on the Rights of Persons with Disabilities would contribute to the effective implementation of the Goal. The general principles of the Convention are particularly relevant in that regard. These principles include non-discrimination (art. 3 (b)), full and effective participation and inclusion in society (art. 3 (c)), respect for difference and acceptance of persons with disabilities as part of human diversity and humanity (art. 3 (d)) and equality of opportunity (art. 3 (e)).

37. Persistent inequality remains for persons with disabilities. In all areas covered by the Sustainable Development Goals, there are clear gaps between persons with and those without disabilities, with persons with disabilities being systematically at a disadvantage. Although gaps vary from country to country, in some countries the gaps are wide. As presented throughout the flagship report, evidence shows that in some countries the gaps can reach 20 percentage points in income poverty, 30 percentage points in multidimensional poverty, 15 percentage points in the ability to afford a meal with protein every second day, 70 percentage points in experiencing good health, 50 percentage points in literacy rates and 70 percentage points in employment-to-population ratios. Persons with disabilities are also at a disadvantage in gaining access to and affording essential services. In countries where gaps are wider, the gaps reach 15 percentage points in access to improved water and 20 percentage points in access to improved sanitation, 10 percentage points in energy access in the household, 10 percentage points in the use of the Internet and 10 percentage points in the overburden of housing costs.[68] Apart from those gaps, persons with disabilities are also at a disadvantage with regard to representation in decision-making (see sect. K) and political participation. The gap between persons with and without disabilities who have problems voting or engaging in politics is 30 percentage points in some countries.[18]

38. Discrimination is a major cause of exclusion of persons with disabilities. Among six developing countries, 46 per cent of persons with disabilities reported having experienced discrimination; in two of those countries, 17 per cent of persons with disabilities reported being discriminated against in public services.[3] Moreover, although most countries have ratified the Convention on the Rights of Persons with Disabilities and much progress has been achieved in the past decade in adopting national laws in line with the Convention, discriminatory laws and policies still exist in some countries, particularly in the areas regulating education for persons with disabilities and political participation.

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[66] European Commission, "Web accessibility".

[67] Heidi Ullmann and others, *Information and Communications Technologies for the Inclusion and Empowerment of Persons with Disabilities in Latin America and the Caribbean*, Project Documents series, (July 2018).

[68] When the share of housing costs is 30 per cent or more of income.

39. Some groups of persons with disabilities are at an even greater disadvantage than others owing to multiple forms of discrimination. In particular, higher inequalities of outcomes are typically observed for women with disabilities (see sect. D), indigenous persons with disabilities and persons with intellectual and psychosocial disabilities.

J. Making cities and communities inclusive and sustainable for persons with disabilities (Goal 11)

40. Sustainable Development Goal 11 calls for making cities and human settlements inclusive and sustainable, with a focus on ensuring access to adequate, safe and affordable housing and basic services for all (target 11.1). Persons with disabilities are mentioned in target 11.2, which addresses accessible transport systems, and in target 11.7, which addresses accessible public spaces. Similarly, the New Urban Agenda, adopted in 2016, addresses accessible public spaces and transport, as well as the right to adequate housing as a component of the right to an adequate standard of living, access to basic physical and social infrastructure, including affordable serviced land and housing, and the empowerment and participation of persons with disabilities. The Convention on the Rights of Persons with Disabilities includes the right to live independently and in the community with access to support services, community services and facilities (art. 19) and the right to adequate housing and access to public housing programmes (art. 28). Accessible transportation and public facilities and spaces for persons with disabilities are also emphasized in article 9.

41. In many countries, transportation systems and public spaces are not always accessible for persons with disabilities. Data from eight developing countries indicate that the average proportion of persons with disabilities who consider transportation not accessible or hindering is 36 per cent, ranging from 13 to 48 per cent.[3,17] Crowdsourced data mostly from developed countries indicated that, in 2017, 32 per cent of public transportation facilities were not accessible.[15] Businesses and public places can also be a challenge. In some countries, more than 25 per cent of persons with disabilities consider banks, shops and post offices hindering or not accessible.[3,18] According to crowdsourced accessibility data, out of over 20,000 public leisure facilities analysed in various countries, mostly in developed regions, half were considered not accessible for persons with wheelchairs.[15] Many countries have developed national strategies and/or action plans to address these challenges, including by enhancing the accessibility of public transportation[69, 70] and public playgrounds[71] and by making sidewalks and pedestrian crossings more accessible by removing obstacles and installing ramps and tactile surface markings.[72]

42. Persons with disabilities face several barriers that prevent them from enjoying their right to adequate housing, such as lack of physical accessibility, discrimination and stigmatization and lack of social housing or community support. Limited access to the labour market can also make securing the financial conditions for renting or financing adequate housing a challenge. Persons with intellectual or psychosocial disabilities, in particular, tend to be more vulnerable to forced evictions, harassment and other threats because their legal capacity is often neglected. A disproportionate number of persons with disabilities are homeless. For example, in the United States

[69] See e.g. Australia, National Disability Strategy 2010–2020.

[70] See e.g. Nepal, National Policy and Plan of Action on Disability 2006.

[71] United Nations, Department of Economic and Social Affairs, *Best Practices for Including Persons with Disabilities in All Aspects of Development Efforts* (April 2011).

[72] See e.g. the initiative of Sweden on accessible playgrounds and adventure playgrounds. See also Julie Babinard and others, "Accessibility of urban transport for people with disabilities and limited mobility: lessons from East Asia and the Pacific", Transport Notes, TRN-44, April 2012.

of America in 2013, 40 per cent of the population in homeless shelters were persons with disabilities.[73] Those who secure a home can find their dwelling challenging owing to lack of physical accessibility. In some countries, more than 30 per cent of persons with severe disabilities need but do not have modifications to make it easier for them to be at home.[18] Affordability is also an issue. In European countries, 23 per cent of persons with disabilities use one third or more of their income on housing costs.[12]

K. Promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels (Goal 16)

43. Sustainable Development Goal 16 calls for promoting inclusive societies where all persons, including persons with disabilities, enjoy access to information, justice and accountable public services and participate in public decision-making at all levels. For persons with disabilities, several targets under Goal 16 are critical to ensuring their full inclusion and participation, such as significantly reducing violence and abuse (targets 16.1 and 16.2); promoting the rule of law and ensuring access to justice (target 16.3); developing effective, accountable and transparent institutions (target 16.6); ensuring inclusive, participatory and representative decision-making at all levels (target 16.7); providing legal identity for all, including birth registration (target 16.9); and ensuring access to information and protecting fundamental freedoms (target 16.10). These targets echo the calls in the Convention on the Rights of Persons with Disabilities for equal recognition before the law (art. 12), access to justice (art. 13) and freedom from exploitation, violence and abuse (art. 16).

44. Equal access to justice for all cannot be achieved without equal recognition before the law and the legal protection that guarantees the rights of persons with disabilities. The constitution is the cornerstone of a country's rule of law. Among the 193 Member States, 22 per cent have explicitly guaranteed the rights of persons with disabilities in their constitutions, but 2 per cent, while guaranteeing equal rights, allow for exceptions in cases where disability prevents the exercise of a person's rights.[25] In addition, the lack of accessibility in courts and of legal documents and the lack of disability awareness training for legal officers are ongoing obstacles to enjoying equal access to justice for persons with disabilities. In five developing countries, on average, 30 per cent of persons with disabilities indicated that the courts and police stations were not accessible.[3]

45. To be inclusive and effective, institutions need to be accessible for persons with disabilities. In 15 countries in the Asia-Pacific region, the proportion of accessible government buildings in the national capital varies from 25 to 100 per cent.[10] A 2012 survey indicated that more than 60 per cent of online national governmental portals had features which were not accessible, especially for those with hand mobility and/or visual disabilities.[74] Public sector employment can also promote inclusive and effective institutions. There are more than 90 countries with quota requirements for the employment of persons with disabilities in the public sector, mostly ranging from 1 to 15 per cent.[57] Persons with disabilities tend to be underrepresented in decision-making bodies. In national parliaments, among 21 countries in Asia and the Pacific,

[73] Office of the United Nations High Commissioner for Human Rights and United Nations Human Settlements Programme, "The right to adequate housing", Fact Sheet No. 21 (Rev.1) (Geneva, 2015), p. 23.

[74] Data provided by the International Federation of Library Associations and Institutions.

half had no parliamentarians with disabilities, and in the other half, on average, only 2 per cent of the parliamentarians were persons with disabilities.[10]

46. Access to information is compromised if the media are not accessible. In 11 countries in Asia and the Pacific, the percentage of accessible television news programmes varies from 1 per cent to 100 per cent.[10] A survey of libraries in 28 countries indicated that although 88 per cent were physically accessible, only 49 per cent had a local policy on accessibility and 63 per cent offered accessible resources. Many countries adopt and implement freedom of information acts, which secure access by the public to data and information held by the Government. However, few countries have considered the needs of persons with disabilities, namely with regard to the accessibility of information.

47. Children with disabilities are often not registered because of stigma. Practices vary across countries, but there have been reports of 80 to 90 per cent of children with disabilities not having birth certificates.[75] Evidence also suggests that persons with disabilities are more often victims of violence. Around 2016, in European countries, 13 per cent of persons with disabilities compared with 10 per cent of persons without disabilities indicated that crime, violence and vandalism were common in their accommodation or the area of their residence.[12,76] A recent survey in Uganda indicated that men and women with disabilities suffered physical violence at higher rates (60 per cent) than their peers without disabilities (51 per cent). Men with disabilities were three times more likely to be victims of sexual violence than men without disabilities, and although the difference between women with and those without disabilities was not as large, women with disabilities were the most likely to suffer sexual violence (34 per cent).[38]

L. Increasing the availability of data disaggregated by disability (target 17.18)

48. In Sustainable Development Goal target 17.18, it is recognized that high-quality, timely and reliable data disaggregated, among others, by disability, are critical to measuring progress and ensuring that no one is left behind. To that end, the target calls for enhancing capacity-building support to developing countries, including for the least developed countries and small island developing States, to increase significantly the availability of such data. In that regard, the SIDS Accelerated Modalities of Action (SAMOA) Pathway addresses the importance of improving the collection, analysis, dissemination and use of data disaggregated by disability in a systemic and coordinated manner at the national level. In article 31 of the Convention on the Rights of Persons with Disabilities, States parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the Convention and to identify and address barriers faced by persons with disabilities in exercising their rights.

49. At the country level, steady progress has been made in the availability of disability statistics. A case in point is the increasing collection of disability data in censuses. At least 120 out of 214 countries or areas that conducted a census during the 2010 round included a set of questions on disability, a significant increase from the approximately 19 countries or areas that had included such questions during the 1970 census round. Moreover, there has been a clear trend in using internationally recommended methodologies in data collection. Of the 120 countries that asked a

[75] Clair Cody, *Count Every Child: The Right to Birth Registration* (Woking, Plan, 2009).

[76] Based on data from 35 countries.

question on disability in their censuses, 55 used questions similar to those developed by the Washington Group on Disability Statistics.[77,78]

50. Various United Nations entities have been working on methodologies to improve the quality of disability statistics worldwide. WHO helps countries to collect data on disability and functioning through the model disability survey,[79] a general population survey engaging multi-stakeholders, including persons with disabilities and their organizations. The Washington Group on Disability Statistics developed a short set of disability questions and an extended set of questions on functioning for the identification of persons with disabilities, as well as, in collaboration with UNICEF, a child functioning module to identify children with functional difficulties and an inclusive education module to assess school environment and participation.[77] Furthermore, the Washington Group and ILO are developing a new module on disability and employment for the inclusion of persons with disabilities in labour force surveys. Finally, the Statistics Division is revising the Guidelines and Principles for the Development of Disability Statistics, originally issued in 2001, to enhance the capacities of countries to increase the availability of quality disability data for effectively measuring and monitoring progress for persons with disabilities.

III. The way forward for disability-inclusive sustainable development

51. The evidence provided in the present note demonstrates that persons with disabilities are at a disadvantage regarding most Sustainable Development Goals. Furthermore, despite the progress observed in laws and policies in line with the Convention on the Rights of Persons with Disabilities, progress in implementing such measures has been slow. Discriminatory laws are also still in place in many countries. To meet the Goals by 2030, international and national development programmes will need to prioritize inclusive development. In particular, concrete action is needed to make persons with disabilities and their situations visible in policymaking and to build just and inclusive societies.

52. Achieving disability inclusion will require international efforts and effective partnerships, involving Member States, United Nations agencies, humanitarian and human rights actors, development actors, peace and security actors, local communities and organizations of persons with disabilities. They can all play a critical role in ensuring that programmes aimed at achieving the Sustainable Development Goals are disability-inclusive, meaning that all steps in such programmes include the perspectives and consider the needs of persons with disabilities. While there are excellent examples of organizations having disability-inclusive development policies and programmes, many other organizations working on Goal-related programmes lack understanding and awareness of disability issues. In addition, organizations of persons with disabilities should be engaged in efforts to achieve inclusive sustainable development.

53. The fundamental issues causing the exclusion of persons with disabilities need to be urgently addressed: discriminatory laws and policies, lack of accessibility in physical and virtual environments, negative attitudes, stigma and discrimination, lack of access to assistive technology and rehabilitation and lack of measures to promote independent living of persons with disabilities. Removing these barriers requires building capacity in countries. National legislation should ensure general human

[77] Available at www.washingtongroup-disability.com/washington-group-question-sets/.

[78] Records of the Statistics Division.

[79] Available at www.who.int/disabilities/data/mds/en/.

rights protections, either through constitutional, anti-discrimination or other national disability legislation. All national legal and policy frameworks should reflect the rights of persons with disabilities and be aligned with the Convention on the Rights of Persons with Disabilities, namely by eliminating discriminatory legislation and language. Accessibility is best pursued by means of regulations and guidelines at the community level and by thematic area, mandated by national laws and accountability mechanisms. Negative attitudes often result from a misunderstanding of disability and the potential of persons with disabilities as contributors to society. Given their wide outreach, education systems and the media can contribute to effectively combating stereotypes.

54. In many countries, essential services for persons with disabilities lack funding, are of poor quality or are unavailable. Critical financial and other resources should be put in place to enable the implementation of inclusive laws and policies, to deliver essential services, including assistive technology and rehabilitation, and to enable persons with disabilities to live independently. Member States, donor agencies and international organizations should track financial commitments for promoting disability inclusion. Organizations of persons with disabilities also need financial support to engage in advocacy, planning and programming.

55. Although mainstreaming disability into all Sustainable Development Goals will be essential for the achievement of the Goals, there are fundamental areas needing urgent action to catalyse progress, namely access to social protection, education, employment and basic services. When designing and implementing social protection systems, States should ensure a flexible combination of income security and disability-related job support to promote the economic empowerment and employment of persons with disabilities. In education, special education systems for persons with disabilities should be discouraged and educational opportunities within the mainstream system provided instead. Increasing access to health for persons with disabilities will require accessible health services and training of health professionals on ways to adequately care for persons with disabilities. To provide inclusive access to water and sanitation, emphasis on accessible designs, including accessible toilets, water points, water carriers, bathing places and handwashing facilities, is needed.

56. Monitoring and evaluation of progress are also crucial for success in the implementation of the Sustainable Development Goals for persons with disabilities. Many relevant global and country indicators are still not disaggregated by disability status. It is therefore necessary for disability disaggregation to become standard in all relevant monitoring systems of Governments and civil society organizations, to inform the development of disability-inclusive national policies and programmes.

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Harmony with Nature

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 71/223, by which the Assembly requested the President of the Assembly to convene, at its seventy-second session, an interactive dialogue on Harmony with Nature to commemorate International Mother Earth Day in April 2018, and requested the Secretary-General to submit to the Assembly, at its seventy-third session, a report on the implementation of the resolution.

The report draws on contributions to the eighth interactive dialogue on Harmony with Nature, held on 23 April 2018, that address Earth jurisprudence in the implementation of sustainable production and consumption patterns in harmony with nature and trends in the implementation of Earth jurisprudence in law, policy, education and public engagement.

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I. Introduction

1. On 20 December 2017, the General Assembly adopted resolution 72/223, its ninth resolution on Harmony with Nature, by which it requested the President of the Assembly to convene, at its seventy-second session, an interactive dialogue, to be held at the plenary meetings to be convened during the commemoration of International Mother Earth Day on 23 April 2018, with the participation of Member States, United Nations organizations, independent experts and other stakeholders. The purpose of the dialogue was to discuss the role of Earth jurisprudence [1] in implementing sustainable production and consumption patterns, with the ultimate goal of ensuring that people everywhere have the relevant information and awareness to achieve sustainable development and lifestyles in harmony with nature, as stated in target 12.8 of the Sustainable Development Goals.

2. The eighth interactive dialogue of the General Assembly was held in commemoration of International Mother Earth Day and was framed by the report of the Secretary-General on Harmony with Nature (A/72/175) and Assembly resolution 72/223.

3. The present report provides a description of some of the highlights of the interactive dialogue and the trends in implementing Earth jurisprudence through legislation, policy, education and public engagement worldwide. Panellists in the dialogue drew attention to Earth-centred law and ecological economics and their application in the interest of sustainable production and consumption patterns in harmony with nature. They described promising approaches, trends and achievements, many of them initiated or promoted by the members of the Harmony with Nature Knowledge Network in their different areas of expertise.[2]

II. Highlights of the interactive dialogue of the General Assembly on Harmony with Nature to commemorate International Mother Earth Day

4. On 23 April 2018, the General Assembly held its eighth interactive dialogue on Harmony with Nature at United Nations Headquarters in commemoration of International Mother Earth Day.[3] The theme of the dialogue was "Earth jurisprudence in the implementation of sustainable production and consumption patterns in harmony with nature". The morning and afternoon panels included the participation of members of the Harmony with Nature Knowledge Network.[4]

5. In his opening remarks, the President of the General Assembly acknowledged the extreme toll that current levels and patterns of consumption and production had taken on human lives, well-being and health, and on the health of the planet. The President emphasized that living in harmony with nature implied balance, and that significant changes to the world's economic and legal systems were required in order to reverse the dominant current production and consumption patterns and attain the targets proposed under the Sustainable Development Goals.

[1] "Earth jurisprudence" refers to a philosophy of law and human governance in which humans are only one part of a wider community of beings and the well-being of each member of that community is dependent on the well-being of the Earth as a whole.

[2] See http://www.harmonywithnatureun.org/experts/.

[3] A summary of the dialogue is available at www.harmonywithnatureun.org/dialogues/.

[4] The panel members were: Juliana Braz, Karen Brown, Roberto Caldas, Jorge Calderón, Method Gundidza, Kathryn Gwiazdon, Kirsti Luke, Laura Movilla Pateiro, Marsha Moutrie, Jorge Iván Palacio and Leah Temper. The moderator was Craig Kauffman.

6. The Permanent Representative of Ecuador emphasized that the environmental crises were precipitated by the social, economic, productive and technological transformations brought about by the modern capitalist world, which undermined the balance between humanity and nature. Human existence depended on restoring that balance, and Ecuador had enshrined the concept of "Buen Vivir" (living well) in its 2008 Constitution, in which respect for nature is required and the rights of nature are recognized.

7. The Permanent Representative of India highlighted that understanding the interconnectedness of the Earth's systems made it evident that the sustainability of life on Earth was threatened by current global economies and lifestyles. Long before modern technological advances, humans had understood this interdependence of life on Earth and developed ways to protect the land, waters and seas. Conferring legal rights on natural entities was a measure to protect nature and to sustain that life, as was evident in traditional practices in Bolivia (Plurinational State of), Colombia, Ecuador, India and New Zealand.

8. The Deputy Permanent Representative of the Plurinational State of Bolivia emphasized that humans must stop seeing themselves as masters and owners of nature; they must recognize themselves as part of a complex and delicate life system. To establish a non-anthropocentric paradigm, all societies must transform their patterns of production and consumption. The country's Constitution had enshrined the indigenous principles of "Buen Vivir" for living in harmony, balance, equity and solidarity with the Earth, and promoted governance reforms based on Earth jurisprudence for a social transformation towards sustainable production and consumption.

9. A member of the European Parliament stated that humans were still learning how to understand their place in nature and the rights and roles of other living and non-living beings. A lack of understanding and a silo mentality prevented humans from seeing themselves as living ecosystems embedded in larger living systems. The challenge was how to instil an Earth-centred world view using a rights-based approach. Putting a stop to the overconsumption of natural resources might require new legislative frameworks on the environment or a convention regarding nature to complement the Universal Declaration of Human Rights, and the United Nations was best placed to take the lead on that issue.

10. Another member of the European Parliament noted that the extreme environmental crises required a shift in people's thinking and a fundamental change in the economic system to reflect the intrinsic value of nature, which extended far beyond ecosystem services. The current legal system was not working because the notion of "rights" was too narrow; it must be broadened to extend rights to future generations and to nature. A deep paradigm shift occurs when a theoretical legal approach is replaced by tangible instances in which rights have been extended to natural entities, for example the initiative to give legal standing to Lake Balaton in Hungary.

11. The representative of the global campaign of the Rights of Mother Earth movement[5] asked the United Nations to draft a universal declaration of the rights of Mother Earth. The campaign had nearly 852,000 signatures from people in 122 countries and was gaining momentum through increased public engagement and a growing number of legal cases in support of the rights of nature. Members of the European Parliament had expressed their support for the drafting of such a universal declaration by the United Nations.

[5] See www.rightsofmotherearth.com/.

12. The representative of the World Federation of United Nations Associations described how young people worldwide were engaged in model United Nations programmes. Those popular educational activities exposed youth to global issues being addressed by the United Nations, including Earth jurisprudence, Earth-centred law and ecological economics, and inspired them to become more involved in the 2030 Agenda for Sustainable Development and the Harmony with Nature programme.

13. Expert members of the Harmony with Nature Knowledge Network from Brazil, Canada, Colombia, Mexico, Spain, New Zealand, the United States of America and Zimbabwe addressed the subject of Earth jurisprudence in the implementation of sustainable production and consumption patterns with concrete examples of its unfolding and application from the standpoint of the disciplines they represented.

14. It was highlighted that human rights and constitutional law are evolving towards recognition of the inherent rights of nature, and that human rights, as recognized in international treaties and conventions, depend on a healthy and balanced environment. Earlier this year, the Inter-American Court of Human Rights recognized the right to a healthy environment as a human right. The Court has also recognized the complementarity of environmental rights and the rights of indigenous and tribal peoples. Nature and the environment must be protected not only because of their usefulness to human beings, but also because of their importance to all other living organisms that merit protection in their own right.

15. The experts stressed that an ecological approach to law was required, with tools for restorative justice, the enforcement of the rights of nature, the complex governance of natural resources and cross-fertilization with human rights and the rights of future generations of all species. They shared examples of local governments that had melded laws on the rights of nature with existing legal doctrines recognized by the courts, as well as cases where the rights of nature were being implemented by educating citizens without the need for enforcement by the judicial system. The importance of raising awareness among judges and lawyers of the concept of legal standing for nature was also underlined.

16. The experts noted that the challenge was to create new everyday experiences that accustom people to a new paradigm, and thus give rise to a society where people comprehend nature as their home instead of an endless source of capital. In contrast to the current economic system, in which short-term economic gains are prioritized over long-term human and ecological health, there are alternative strategies and mechanisms, such as the solidarity economy, which is based on the principle of the non-accumulation of capital. Sustainable production and consumption systems depend on humans working in harmony with nature and on local economies geared towards sufficiency as opposed to accumulation.

17. Members of the Harmony with Nature Knowledge Network explained that indigenous peoples worldwide had historically understood the reciprocal and mutually sustaining relationship between humans and all other entities that are part of Mother Earth on the basis of gratitude and respect. One participant shared the experience of the Tūhoe, a Māori iwi (tribe) in New Zealand, which had signed a treaty with the Government recognizing its kinship with elements of nature and recognizing Te Urewera, its historical home, as a living, spiritual being with legal personhood. Similarly, the Constitutional Court of Colombia had recognized the Atrato River and its tributaries as living entities that support other forms of life and culture, making them a subject with rights and deserving of special protection.

18. The need for production and consumption systems based on principles of reciprocity, returning fertility to the soil and helping to ensure the health of non-human elements of nature was underscored throughout the dialogue. The

importance of education and ensuring that students experienced and understood how nature sustains life was also emphasized by the panellists.

19. Moreover, the experts stressed that sustainable production and consumption patterns depended on the continued evolution of legal and economic frameworks that recognized the rights of nature along with the shared responsibility and duty of humans to care for it.

III. Trends in the implementation of Earth-centred law

20. Worldwide, there is a growing commitment to protecting nature, with an increase in the adoption of new legislation granting rights of nature.* In this context, it is important to underscore the collaboration between non-governmental organizations (NGOs), civil society associations and legislators in drafting legislation that recognizes nature as a subject of rights and or the legal personhood of nature in a number of countries.

21. In some instances, NGOs and civil society associations have informed and advised legislators on the evolution of initiatives, court rulings and legal precedents relating to the rights of nature. In other instances, often as a result of environmental disasters, civil society has acted on behalf of nature and initiated legal action.

22. The recognition of the legal personhood of nature on the basis of customary or indigenous law exemplifies the incorporation of indigenous peoples' cosmogony into the body of Western positive law, enriching it with the vision that humans are one with the natural world and recognizing the fundamental truth of the intrinsic value of nature.

A. National legislation adopted to grant rights of nature

23. On 21 September 2017, the Parliament of Victoria, Australia, passed the Yarra River Protection (Wilip-gin Birrarung murron) Act 2017, which became law on 1 December 2017. In the Act, the Yarra River was legally recognized as an indivisible living entity that deserves protection, and the intrinsic connection of the traditional owners to the River and their role as custodians of the land and waterway which they call Birrarung were recognized.

24. Belize, which is home to the largest barrier reef in the western hemisphere, became a world leader in ocean sustainability when the Government introduced legislation to end offshore oil activities. The adoption of an indefinite moratorium that was signed into law on 29 December 2017 in response to global pressure to preserve the reef, which is a World Heritage Site of the United Nations Educational, Scientific and Cultural Organization (UNESCO), is based on an earlier recognition of nature as a subject of rights.

25. On 21 December 2017, the rights of nature were recognized for the first time under Brazilian law in an amendment to the Organic Law of the municipality of Bonito, in the state of Pernambuco. That development was followed by the adoption of legislation on the rights of nature by the municipality of Paudalho on 25 April 2018, and municipalities in other states are following suit. Such legislation has been enacted through close collaboration between legislators and the NGO "MAPAS" (Métodos de Apoio à Práticas Ambientais e Sociais), which has brought together local

* See www.harmonywithnatureun.org/rightsofnature.

communities and environmental and municipal authorities interested in the rights of nature.

26. On 5 April 2018, the Supreme Court of Colombia issued a historic ruling on climate change and future generations in response to a lawsuit filed by 25 children and young people from Colombia, represented by the NGO Dejusticia. The Court recognized the rights of the Amazon region in Colombia and established that the State had not adequately addressed the problem of deforestation in the region, despite having entered into numerous international commitments and despite the existence of sufficient regulation and jurisprudence on the matter. The Court ordered the President and the Ministry of the Environment of Colombia to formulate an action plan to counteract deforestation in the region and to draw up an intergenerational pact for the life of the Colombian Amazon.

27. That decision followed the ruling by the Constitutional Court of Colombia that the Atrato River was "subject to the rights that implicate its protection, conservation, maintenance and, in this specific case, restoration" in a lawsuit brought by Afro-Colombian organizations, indigenous groups and the NGO Tierra Digna.

28. On 25 September 2017, the President of Costa Rica signed the Mother Earth Peace and Wellness Agreement as a result of an executive decree of 22 April 2016 on Mother Earth. The Agreement resulted from an initiative launched on 21 December 2012 by the Gaia Foundation in Costa Rica and the Mother Earth Council, with delegates from the country's eight indigenous peoples, requesting that a declaration of principles of the conscious evolution of Mother Earth be signed and implemented as a way to assume personal responsibility for the mitigation of climate change. The Agreement recognized the imperative of adding a sense of personal responsibility to the country's goal of converting Costa Rica into a carbon neutral nation so that each Costa Rican citizen could reconnect with Mother Earth by minimizing his or her ecological footprint.

29. In the 2008 Constitution of Ecuador, the rights of nature are guaranteed, and between 2010 and 2017 the Constitutional Court issued a series of mandates protecting nature, including flora and fauna. On 6 April 2018, the Court issued a final verdict on the Vilcabamba River case, confirming the constitutionality of the measures ordered in 2011 to restore the River bank, which had been damaged by road construction. The case dates back to 2010, when a constitutional petition was filed by two local residents on behalf of the River — the first time the constitutional provision on the rights of nature had been invoked in a court of justice on behalf of a river.

30. In India, the decision of the High Court of Uttarakhand to grant rights to the Ganges and Yamuna Rivers, as well as to the Himalayan glaciers within India, inspired the adoption of a resolution by the Legislative Assembly of Madhya Pradesh on 4 May 2017 declaring the Narmada River a living entity and the lifeline of the State. In addition, on 4 July 2018, the High Court of Uttarakhand passed a judgment in which it recognized all animals as legal persons with rights and named all citizens of Uttarakhand as legal guardians with the ability to speak on behalf of animals.

31. As stated in the Charter of the Kanak people of the Loyalty Islands in New Caledonia, humans are an integral part of their ancestral territory, and individual rights are expressed in the collective rights of the group. In observance of the Charter, on 6 April 2016, the Loyalty Islands province adopted the first phase of its environmental code, through which certain elements of nature may be recognized as having their own rights. Valérie Cabanes, a member of the Harmony with Nature Knowledge Network, explained that the Kanak people believe that customary land governance is the best way to protect natural elements as well as to represent their own interests, and they are prepared to endow certain elements of nature with legal personhood.

32. In December 2017, Mount Taranaki in New Zealand was granted legal personhood, as was all Crown-owned land within Egmont National Park (Taranaki Maunga). As noted above, legal status had previously been granted to the Te Urewera and the Whanganui River. The Crown and eight Taranaki iwi signed a record of understanding on Egmont National Park (Taranaki Maunga), making the park the joint responsibility of the local Māori and the Government.

33. In 2018, the Government of New Zealand and the Ngāti Rangi iwi signed a deed of settlement providing for, among other things, a redress framework for the Whangaehu River, known as the Te Waiū-o-te-Ika Framework. The settlement documents recognized the river as a living and indivisible whole, from Te Wai-a-Moe (Crater Lake) to the sea, comprising physical and metaphysical elements that give life and healing to the surroundings and communities.

34. In South Africa, the Supreme Court of Appeal issued a judgment on 1 June 2018 supporting the customary law rights of the Dwesa-Cwebe indigenous communities to harvest mussels on the east coast of the country in accordance with their own ancient system. The communities were able to prove the continued existence of their ancient laws governing fishing and the extraction of mussels, which ensure the healthy survival of the mussel community. The judgement confirmed that customary law and communal ownership systems that had existed long before colonial interventions should be given due authority and respect.

B. Ongoing national legislation granting rights of nature

35. In Brazil, the lawyer Lafayette Sobrinho and the NGO Pachamama filed a lawsuit on behalf of the Doce River, located in the state of Mina Gerais, on 5 November 2017. The request for legal protection of the Doce River was submitted in response to the Bento Rodrigues dam disaster, which occurred on 5 November 2015 and is described as the worst environmental disaster in the history of Brazil. The disaster sparked a humanitarian crisis, as hundreds of people were displaced. It is estimated that around 60 million cubic meters of iron waste flowed into the Doce River, with toxic contamination reaching the Atlantic Ocean.

36. In the city of Fortaleza, Brazil, a public hearing was held on pressing environmental issues raised by communities and local legislators, followed by debates between representatives of academia and civil society. A draft bill on the recognition of the rights of nature is currently being proposed.

37. In France, the Government has initiated a reform to further amend the Constitution of 1958 and the Charter of the Environment of 2004 to include more ecological considerations. Various members of Parliament have tabled over 20 amendments addressing a range of topics, including the rights of living entities, animal welfare, the global commons, the crime of ecocide and the principle of non-environmental regression, thus signalling a trend towards a more Earth-centred constitutional process.

38. In India, religious leaders, inspired by the decision of the Uttarakhand Court and the Legislative Assembly of Madhya Pradesh to grant rights of nature to the Narmada River, submitted a proposal for a national act on the River Ganges to the Prime Minister. The act would provide the sacred River with legal personhood.

39. In the United States, municipalities continue to adopt local laws recognizing the rights of nature. As a first step towards legislation, on 9 July 2018, the Board of Trustees of the town of Crestone, Colorado, adopted, by unanimous consent, a resolution recognizing the rights of nature. The town is working to establish links with the surrounding communities in the San Luis Valley to protect one of the largest

aquifers in the south-western United States, which also serves parts of northern Mexico. The Mayor of Crestone is working with the Geoversiv Foundation, the Earth Law Center and the former City Attorney of Santa Monica, California, who wrote that city's law on the rights of nature.

C. Policy trends relating to the rights of nature

40. In Argentina, constitutional law scholars have presented a public document entitled "Contributions to the reform of the Constitution of the Province of Santa Fe on environmental matters" to the Directorate of Political and Constitutional Reform. The document contains a proposal to recognize the rights of nature in the upcoming reform of the Constitution of the Province.

41. In Aruba, the statutes of the RAIZ political movement promote the rights of nature, including the legal status of natural entities, such as trees, oceans, plants and animals, and the concept of "Biba Bon/Biba Contento" (Sumak Kawsay), according to which humans must live in harmony with nature. Those goals are to be reached by shifting from a view of nature as property under the law to recognizing that nature itself can have rights.

42. On 31 May 2018, the city council of the Dongeradeel municipality in the Netherlands adopted a motion to work actively for the rights of the Wadden Sea ecosystem and for its protection by a new governance authority. The Wadden Sea, a UNESCO World Heritage Site, is the largest unbroken system of intertidal sand and mud flats in the world.

43. In Sweden, the Sami Parliament endorsed the Universal Declaration of the Rights of Mother Earth on 25 May 2018.[7] The Sami, like other indigenous peoples, experience the effects of climate change on their traditional ways on a daily basis. The parliamentary motion, drafted by two female members of the Sami Parliament, stated: "We believe a paradigm shift is needed towards a view where humans understand that we are all part of nature, which is the way indigenous peoples relate to nature. We, the Sami people, believe that we belong to the land, not the other way around."

44. In Uganda, the group Advocates for Natural Resources and Development is working with the Committee on Natural Resources to develop a stronger understanding of Earth jurisprudence and with parliamentarians to promote the inclusion of rights of nature in the National Environment Act.

45. In Ireland and in Northern Ireland, United Kingdom of Great Britain and Northern Ireland, the Green Party (*Comhaontas Glas*), in close collaboration with the NGO Nature's Rights, amended its environmental policy document in February 2018, recognizing that nature and the environment must be granted stronger legal rights to exist, to persist, to be maintained and to be restored. The Green Party also requested public consultation and dialogue with countries that have successfully integrated rights of nature into their constitutions and legal frameworks, to develop a proposal to protect the rights of nature within the Constitution of Ireland and to support humans flourishing in harmony with nature.

46. The NGO Nature's Rights has also collaborated with the town council of Frome in the southwest of England to seek a local-level bylaw in which the rights of Rodden Meadow and the River Frome are recognized. The council conducted a public consultation designed by Nature's Rights in which participation was voluntary, and the response was highly positive: 96.6 per cent voted in favour of local empowerment

[7] See A/64/777, annex II.

to protect Rodden Meadow and the River from ecological destruction, and 94 per cent felt that non-human beings have a right to exist. The next step is to prepare a regulatory report and an application, which will include a draft bylaw.

47. The Working Group on Indigenous Populations/Communities in Africa of the African Commission on Human and Peoples' Rights, in cooperation with the Gaia Foundation and the African Biodiversity Network, is now developing ways to implement Commission resolution 372, adopted in 2017, on the protection of sacred natural sites and territories, and has begun drafting a new African model law. In the resolution, the role of sacred natural sites in the protection of African ecosystems is acknowledged, as is the role of nature in the realization of African people's rights, including the right to economic, social and cultural development and the right to a satisfactory environment favourable to their development.

48. In Nigeria, the River Ethiope Trust Foundation and the Earth Law Center have completed a draft act for the rights of the River Ethiope, under which it would become the first river in Africa to have legal rights.

49. The Earth Law Center has spearheaded many important efforts to grant rights of nature. The Center has collected signatures from people in 32 countries for an initiative on the rights of the ocean in which the United Nations would be called upon to include the rights of nature in negotiations for an international treaty on the biodiversity of the high seas. The Center has also finalized an Earth law framework for marine protected areas based on a holistic and rights-based approach to nature. Together with the Organization for the Conservation of Cetaceans, based in Uruguay, the Center also is drafting a proposal for the legal rights of marine areas in that country.

50. To protect rivers, the Earth Law Center has updated the draft universal declaration of river rights on the basis of input from experts in the rights of nature worldwide. The declaration now forms the basis of laws being drafted in countries throughout the world. It has been cited in an amicus brief in Argentina and in an amicus brief seeking legal rights for the Anchicayá River in Colombia, presented to the Inter-American Commission on Human Rights and to the Council of State of Colombia by the Earth Law Center, International Rivers and the International Network of Human Rights.

51. The International Union for Conservation of Nature continues to demonstrate strong support for the rights of nature. The second Inter-American Congress on the Environmental Rule of Law, held in Santiago from 4 to 6 September 2017, focused on the theme "Environmental rule of law trends from the Americas: pollution free, peaceful and inclusive societies for sustainable development". In its report, the Congress noted that the general secretariat of the Organization of American States, the United Nations Environment Programme and the World Commission on Environmental Law of the International Union for Conservation of Nature, along with key partners, were working to support member States in developing and strengthening their enabling legal and institutional frameworks for the rights embodied in the World Declaration on the Environmental Rule of Law of the International Union for Conservation of Nature, which recognizes the "Right to Nature" in principle 2.

52. The Ecological Law and Governance Association, established at the University of Siena, Italy, in September 2017, provides the institutional framework for the Oslo Manifesto of 2016, which was endorsed by several hundred academics and professionals in environmental law from the International Union for Conservation of Nature. The Siena Statement of Solidarity, developed as an addendum to the Manifesto, provides a framework of law and governance to shift away from environmental law and towards ecological law in harmony with nature.

53. In addition, the Ethics Specialist Group of the World Commission on Environmental Law explored the ethical and legal implications of a rights-based approach to nature in its Biosphere Ethics Initiative and its partnerships with the Center for Environmental Ethics and Law and the Earth Law Center. Those institutions are launching a collaboration with the International Union for Conservation of Nature that will explore jurisprudence on the rights of nature and continue to develop the universal declaration of river rights.

IV. Education on Earth jurisprudence

54. Many universities and institutions featured in the previous report have further strengthened their curricula in relation to Earth jurisprudence and the rights of nature, and such curricula are being implemented at an increasing rate at more academic institutions worldwide. That trend has been accompanied by a rise in advocacy activities to promote public engagement, provide education and generally increase awareness and understanding of the issue.

A. Formal education on Earth jurisprudence

55. In Santa Fe, Argentina, the Faculty of Law and Social Sciences of the National University of the Littoral has continued to expand its programmes and online course to promote knowledge of the rights of nature, in particular through: a postgraduate online course on theory, practice and an interdisciplinary approach to the rights of nature; a winter seminar on activism and tensions in Latin America in relation to the rights of nature; and a Latin American studies seminar on challenges for advocacy in Argentina and Latin America.

56. In Australia, the University of Newcastle offers a summer course on international environmental law, including seminars on the transition from regarding nature as an object to regarding nature as a subject of rights.

57. In Brazil, at the Faculdades de Campinas, a two-credit course on topics related to the United Nations agenda has been established as part of the formal curriculum of the undergraduate programme on international relations. During the first semester of 2018, 25 students attended classes and discussions on Harmony with Nature and explored the concepts of Earth jurisprudence and ecological economics. The outcome was an e-book written by the students on the 2030 Agenda, in particular the importance of standing up for human rights, which contains an analysis of recent trends relating to the agenda item on Harmony with Nature.

58. In São Paulo, Brazil, the Dante Alighieri school has continued its second year of an interdisciplinary project inspired by the United Nations Harmony with Nature programme. The project addresses different fields of knowledge, including biology, chemistry, English, geography, history, mathematics, physics and technology, as these subjects relate to nature.

59. In 2010, the Plurinational State of Bolivia enacted an educational law to ensure that the public education curriculum is consistent with the concepts of living in harmony and balance with Mother Earth. The Law specifies that education in Bolivia must be oriented towards intellectual and material production, creative work and a harmonious relationship with all systems of life, including the consideration of human communities as integral parts of Mother Earth. Those principles have been put into practice in a complementary capacity-building programme for teachers. Since 2012, over 130,000 teachers have been trained, and as of 2013, the programme had been implemented gradually across all primary and secondary public schools.

60. In Montreal, Canada, McGill University continues to strengthen the "Economics for the Anthropocene" programme, a graduate research and training partnership that involves 25 institutions, 80 collaborators and 40 graduate student fellows. The premise of this law and governance research initiative, which is coordinated closely with the Ecological Law and Governance Association, is the need to reframe law and governance towards a mutually enhancing human-Earth relationship, with rigorous reliance on contemporary science and traditional knowledge systems.

61. A new project entitled "Leadership for the Ecozoic", a global partnership initially based at McGill University and the University of Vermont, offers doctoral programmes to: educate and empower new leaders for the Ecozoic; develop a global research-to-action network to heal and restore Earth's life support systems and to define and foster a different mode of inhabiting the Earth; and mobilize and focus higher education resources and communication on mitigating multifaceted, human-induced planetary declines in life support capacity.

62. On 19 April 2018, the President and the Minister of Public Education of Costa Rica inaugurated the "I am the answer" programme, incorporating the principles of the declaration for the conscious evolution of Mother Earth into the public education system. From an early age, Costa Ricans are now being educated to share the values embodied in the Declaration and to participate actively in the fulfilment of the Sustainable Development Goals. In addition, on 12 December 2016, the National Council of Rectors of Costa Rica agreed to coordinate the activities of public universities in the development of a project on Mother Earth peace trails (Senderos de Paz Madre Tierra). The principles of the declaration are also shared in courses offered by the United Nations-mandated University for Peace and the University of Costa Rica.

63. In Guayaquil, Ecuador, the Universidad de Especialidades Espíritu Santo has integrated the rights of nature into a number of courses, including courses on public international law, constitutional law, global economic development, environmental law and ecology. Particular attention is given to the role of indigenous peoples as key actors in the achievement of sustainable development.

64. In New Zealand, the University of Canterbury has included content on Earth jurisprudence and the rights of nature, in particular on the use of legal personhood to protect natural resources, and indigenous rights are recognized in comparative contexts in public law, resource management law, water resource management and legal ethics. A number of students have chosen the rights of nature as the topic of their undergraduate or honours research projects.

65. The International Earth Trusteeship Gathering, held in The Hague from 22 to 24 June 2018, brought together initiatives on governance, law and legal structures, Earth practices and advocacy to heal the relationship between humanity and the Earth and to fulfil the responsibilities of humans as trustees of the Earth. The goal was to work towards building actions around the seventieth anniversary of the Universal Declaration of Human Rights, on 10 December 2018.

66. In Tarragona, Spain, the master's degree programme in environmental law offered by the Tarragona Centre for Environmental Law Studies at the Universitat Rovira i Virgili includes several seminars on the rights of nature. In June 2018, a seminar was held on the topic "Human rights and the rights of nature: state of the art in Latin America".

67. Farnebo Folk High School, in Osterfarnebo, Sweden, has developed a new course curriculum for high school students on the rights of nature and the concept of Buen Vivir. The course will explore the meaning of this profound internal and external transformation through two of the most recent legal concepts: the rights of nature,

which has its roots in indigenous people's relationship with nature, and its Sami counterpart.

68. In Colorado Springs, United States, Colorado College will be introducing the theme of Earth jurisprudence in the course entitled "Sustainability and the Anthropocene" as part of the Talanoa Dialogue and an ethnography project within the community of Crestone, Colorado, that will be formally submitted to the Talanoa Dialogue Portal of the secretariat of the United Nations Framework Convention on Climate Change.

69. A group of African professionals from Benin, Cameroon, Ethiopia, Kenya, South Africa, Uganda and Zimbabwe have embarked on the Gaia Foundation's three-year course to become Earth jurisprudence practitioners. The participants will undergo residential training and wilderness experience and complete written and practical assignments guided by indigenous elders and progressive thinkers.

70. In Latin America, a number of universities are offering courses on the rights of nature and nature's legal personhood on the basis of neo-constitutionalism, which offers a new perspective on how to look at and discuss all aspects of law. In the Plurinational State of Bolivia, the Universidad Mayor de San Andrés offers a master's degree programme in constitutional rights and a doctorate in constitutional rights and administration. In Colombia, the Universidad Libre de Colombia offers a master's degree programme in constitutional rights at its locations in Cali and Pereyra. In Ecuador, the Simón Bolívar Andean University offers a master's degree in constitutional rights, including a course on critical constitutionalism. In Spain, the University of Valencia offers a master's degree programme in constitutional rights, including a course on neo-constitutionalism, as well as a master's programme in constitutional rights in Tegucigalpa, Honduras.

71. In October 2017, the European Commission, acting through its Education, Audiovisual and Culture Executive Agency, financed a three-year cooperation project to develop a new master's programme on the rights of nature and peacebuilding, involving universities in Colombia, Ecuador, France, Italy and Spain, as well as the Court of Justice of the Andean Community and the Secretariat of Higher Education, Science, Technology and Innovation of Ecuador. The kick-off meeting for the programme was held in Quito on 26 and 27 February 2018, and the first dissemination events with stakeholders will be held in Cartagena de Indias, Colombia, in September, in Quito in October, and at the ninth international meeting of the Brazilian National Council on Research and Graduate Courses on Law, in October 2018.

72. The Earth Law Center is in the process of drafting an Earth law textbook, which is scheduled for completion in early 2019 and will serve as the first-ever rights of nature textbook for law schools in the United States.

B. Informal education and public engagement on Earth jurisprudence

73. In Australia, the University of Melbourne Centre for Resources, Energy and Environmental Law, together with the Australian Earth Laws Alliance, hosted a research workshop on legal rights for rivers entitled "New developments in the legal status of rivers" in August 2017. The event brought together experts from Australia, New Zealand and South America.

74. In Brasilia, the Conference of Judges and Prosecutors on Water Justice hosted the first International Water Justice Moot Court in March 2018, organized by the World Commission on Environmental Law and the Global Judicial Institute on the Environment. Law students from Brazil, Kenya, the Netherlands, New Zealand, Pakistan and the United States (Hawaii and New York) who took part in the event

explored the legal personhood of rivers and the impact of the climate crisis on water law disputes. Students presented their arguments to a panel of high court judges from Australia, Barbados, Mexico, Norway and Thailand, and from countries in East Africa.

75. In September 2018, the Faculdades de Campinas college, in partnership with the World Federation of United Nations Associations, will hold the second session of the International Model United Nations Brazil, including a debate on the topic of Harmony with Nature, to raise awareness among young Latin American students and to ensure that, by 2030, people everywhere have the relevant information and awareness for sustainable development and lifestyles in harmony with nature.

76. In September 2017, in Florianópolis, Brazil, the Federal University of Santa Catarina hosted an international seminar on human rights and the rights of nature, which strengthened the dialogue between Brazilian environmental law researchers and the Ecological Law and Governance Association.

77. On 5 November 2017, to mark National Culture Day in Brazil, the NGO Pachamama and representatives of various social movements, indigenous peoples, artists and legal experts from all over Brazil undertook a national mobilization campaign in defence of rivers called "Pororoca", an indigenous word that means "loud and clear" and refers to a tidal bore, a natural phenomenon occurring in certain rivers, including the Amazon and the Ganges.

78. The seventh International Congress on Constitutionalism and Democracy: The New Latin American Constitutionalism was held in Fortaleza, Brazil, from 26 to 29 November 2017 on the theme "Harmony with nature and Buen Vivir". Discussions among intellectuals, lawyers, jurists, representatives of public authorities, activists, indigenous peoples and students from many countries in Latin America led to the adoption of the Charter of Fortaleza, also known as the Pachamama Manifesto. In the outcome document, the Congress called for the immediate promotion of the ethical and legal principles of harmony with nature and the recognition of the rights of Pachamama (Mother Earth).

79. From 12 to 14 June 2018, the Federal University of Ceará in Brazil hosted discussions on ecology, natural resources, ecological economics, environmental education, the rights of nature, environmental management, sustainable development, ethics and spirituality. Participants worked to strengthen the connections between distinct but related areas of knowledge, including the convergence between disciplines and the contributions that the new Latin American constitutionalism had brought to the Harmony with Nature paradigm.

80. The second International Forum for the Rights of Mother Earth, attended by approximately 1,000 people, was held in São Paulo, Brazil, on 3 and 4 June 2018. The Forum was organized through collaboration between the NGO MAPAS, the Secretary of Environment of São Paulo and Councilman Gilberto Natalini, author of the proposed law in which the rights of nature are to be recognized in the city of São Paulo. Experts on legislation on the rights of nature and new constitutionalism, government officials, religious and spiritual leaders and representatives of indigenous people expressed support for the new paradigm establishing rights of nature.

81. After the Forum, the President of MAPAS addressed the members of the general assembly of the Brazilian union of city councillors, who were interested in adopting legislation on the rights of nature in other Brazilian cities. The NGO has offered support for legislators introducing specific public policies for living in harmony with nature, and for farmers who believe that agribusinesses have damaged the environment and who would like to develop farming projects in harmony with nature.

82. In Quito, the Brazilian National Council on Research and Graduate Courses on Law and the Simón Bolívar Andean University will organize the ninth International Meeting of the National Council from 17 to 19 October 2018 on the theme "Empirical research in law: the new Latin American constitutionalism and the challenges for law theory, State theory and law education". Topics will include environmental law, sustainability and the rights of nature, as well as a workshop on Harmony with Nature that will feature members of the United Nations Harmony with Nature Knowledge Network.

83. In June 2018, the Maison de la Recherche en Sciences Humaines hosted the fourth Tony Oposa Intergenerational Moot Court, sponsored by universities and organizations from various countries, in Caen, France. Students debated the protection of current international law for present and future generations, and many emphasized the importance of indigenous environmental knowledge and stewardship of nature as part of the cosmogony of indigenous people.

84. In Blismes, France, the Triglav Circle hosted gatherings focused on problems of the environment, rurality and agriculture, and the enrichment of the current Sustainable Development Goals as inspired by the encyclical letter "Laudato Si". The Circle emphasized the role of the spiritual in human affairs by addressing the limitations of instrumental rationality. Participants noted efforts in the region to introduce permaculture and biodynamic and organic farming to revive the countryside and small towns by treating their land and animals with love and respect.

85. In Bali, Indonesia, in April 2018, the Green School hosted a one-week Green Educator Course for a group of nearly 40 teachers, directors and employees from educational institutions in different countries. The course included workshops on the United Nations Harmony with Nature programme and on the theme "Rights and voice of Mother Earth", and participating teachers committed themselves to including Earth jurisprudence in school curricula from kindergarten to high school.

86. In Italy, in follow-up to the international conference entitled "How to govern the ecosystem? A multidisciplinary approach", held at the University of Bologna in early 2017 in support of the United Nations Harmony with Nature programme, the Department of Law of the University of Bologna School of Law published an e-book under the same title. The publication contains all the proceedings of the conference and articles by contributing scholars, many of whom are members of the United Nations Harmony with Nature Knowledge Network.

87. In addition, on 16 and 17 April 2018, the Flaminia Foundation of Ravenna and the il Cerchio association, together with the University of Bologna School of Law, sponsored a conference on alternate forms of justice within and outside Western models, which featured a speech by Professor Simona Fraudatario of the Permanent Peoples' Tribunal about her article on environmental justice and the rights of Mother Earth.

88. In May 2018, in Lecce, Italy, in partnership with the Centro di Ricerca Euroamericano at the University of Salento, a national festival on sustainable development was organized, including the promotion of the celebration of Earth Day in Italy, towards the realization of a permanent seminar on constitutional ecology and the creation of a dissemination laboratory based on the United Nations Harmony with Nature programme. In addition, the establishment of a Harmony with Nature working group for the elaboration of a constitutional charter of the ecosystem and guidelines for demo-diversity: democracy in biodiversity as international working documents was suggested. A number of participants joined the Global Ecological Integrity Group, which disseminates information on the activities of the United Nations Harmony with Nature programme to other universities.

89. In Puebla, Mexico, from 17 to 22 March 2018, the first Living Rivers Forum and Festival Atoyac Xicome was held on channel restoration in and the protection of the Atoyac River, setting a national precedent from a multicultural and multidisciplinary platform. The Forum and Festival involved community members, members of the business community, legislators, scientists, philosophers, ecologists, artists, young people, guardians of tradition and social leaders. The meeting provided an inclusive space for reflection, analysis, consciousness and debate regarding the challenges of the sustainable management of water, including legislative initiatives for granting rights to the Atoyac River.

90. The outcome of the Forum included the creation of the National Network of Rivers of Mexico, the signing of commitments on the rights of the Atoyac River, in particular "Living River 2018–2031", the monitoring of compliance with the governing plan, which includes 39 Government actions, and the legal statement declaring the Atoyac River a protected natural area.

91. In Veracruz, Mexico, from 16 to 20 March 2018, the first Cumbre Tajin Festival was held. The festival was focused on living in harmony with nature through ecological recommendations, granting rights of nature and studying indigenous traditions and their relationship with Mother Earth.

92. In May 2018, in Tarragona, Spain, in conjunction with the Tarragona Centre for Environmental Law Studies and the Tarragona Environmental Law Students Association, the Universitat Rovira i Virgili hosted the third Tarragona International Environmental Law Colloquium. Discussions focused on balancing the rights of nature and human rights in an Earth-centred legal paradigm, the rights of nature in the European Union and the recognition of the rights of rivers, among other topics. The Centre also organized and participated in the twelfth international seminar on environmental, constitutional and international dialogue, held in Palmas, Brazil, and Quito, Ecuador, on the state of law, the environment and nature, at which the rights of nature and well-being were the main topics.

93. In Geneva, the NGO Objectif Sciences International hosted its sixth annual international conference on the rights of nature on 11 and 12 December 2017. The conference brought together more than 30 speakers from networks working on initiatives relating to the rights of nature, as well as jurists. The next conference will be held on 11 and 12 December 2018.

94. The Gaia Foundation in the United Kingdom and partner organizations across Africa are developing an African Earth jurisprudence movement. The first cohort of African Earth jurisprudence practitioners, including individuals from Ethiopia, Kenya, South Africa, Uganda and Zimbabwe, graduated from the Foundation's three-year training programme in July 2017 and have become spokespersons for respecting the laws of nature and reconnecting with the Earth. Through community dialogues, public presentations, radio, television and print media, they are engaging with local, national and international audiences. African voices for Earth jurisprudence were represented at the eighth interactive dialogue on Harmony with Nature, at the NiceFuture meeting held in Switzerland, entitled "Au coeur des temps", with transition actors, farmers, foresters, the scientific community and indigenous leaders, and at the International Forum for Well-Being organized by the Comité catholique contre la faim et pour le développement-Terre solidaire in France, among other forums.

95. The Global Alliance for the Rights of Nature continued its programme of activities for the adoption and implementation of legal systems in which the rights of nature are recognized, respected and enforced. During the United Nations Climate Change Conference in Bonn, Germany, in November 2017, the Global Alliance hosted the fourth International Rights of Nature Tribunal, a two-day event for the simulated

adjudication of cases from across the globe, exposing the significant role legal systems play in enabling climate change and global environmental degradation. At the International Tribunal, cases from 19 countries were heard in mock trials. Witnesses gave first-hand accounts of their experience of living near fracking operations, oil wells, refineries and coal mines; of how nature is suffering because of such destructive activities; and of how defenders of Mother Earth are persecuted and criminalized. The Tribunal found that, in all cases, systematic and severe violations of the Universal Declaration of the Rights of Mother Earth had been committed and had often been accompanied by human rights violations.

96. Similarly, the Global Atlas of Environmental Justice, a participatory research project involving a significant number of institutions, entails mapping ecological conflicts and the mobilization of citizens against life-threatening extraction activities around the world.

97. The World Federation of United Nations Associations, at its model United Nations Conference, held a discussion on Harmony with Nature in February 2018 at United Nations Headquarters in New York. The discussion was based on the report of the World Federation of United Nations Associations on Harmony with Nature, which drew on the work of the United Nations Harmony with Nature programme. The theme was allocated to a simulated General Assembly committee, and high school students engaged in a general debate in which they delivered statements on Harmony with Nature before drafting and adopting by consensus a resolution on the agenda item.

98. The Earth Law Center helped to launch an Earth law club at Vermont Law School, the first law student body focusing exclusively on the rights of nature, and helped to organize a mock trial on the rights of nature in middle and high schools in the United States.

V. Conclusion

99. Earth jurisprudence continues to be incorporated into national law in an increasing number of countries worldwide. In some instances, the judiciary has demanded State action affirming or restoring the rights of rivers, forests or glaciers, while in other instances, municipal or local legislative bodies have recognized the rights of nature.

100. The inclusion of Earth jurisprudence in education, through both formal and informal processes, has also gained momentum in recent years. Increasing numbers of schools, universities and institutions are designing and delivering programmes and projects in their curricula that focus on an Earth-centred paradigm, thereby leading to the dissemination of Earth jurisprudence in the professional and public spheres. Furthermore, many of the expert members of the Harmony with Nature Knowledge Network are prolific writers who have either participated in the making of film documentaries or been consulted by filmmakers on the rights of nature.[8]

101. Academics, universities, non-governmental organizations, civil society groups, federal courts and research institutes worldwide have been hosting seminars, congresses and debates at the local, national and international levels to advance Earth jurisprudence and to provide clarity on the transition from environmental laws to legislation on the rights of nature. Those varied initiatives have significantly increased public attention to and understanding of Earth jurisprudence and of the need to live in harmony with nature.

[8] www.harmonywithnatureun.org/references.

102. In many of the activities addressed in the present report, NGOs and civil society associations have been important constituencies. They have initiated campaigns and drafted various declarations on the rights of nature and Earth jurisprudence. In addition, they have called upon the United Nations to engage in drafting a universal declaration of the rights of Mother Earth that reflects the growing worldwide commitment to protecting the Earth and future generations of all species.

103. The shift from a human-centred to an Earth-centred or non-anthropocentric world view and the resulting changes in law and policy have been possible thanks to the strong commitment of members of the Harmony with Nature Knowledge Network. Its members are working to ensure that people everywhere have the relevant information on and awareness of sustainable development and lifestyles in harmony with nature, as stated in target 12.8 of the Sustainable Development Goals.

104. The United Nations is committed to remaining conversant with recent and forthcoming transformations and actions in law, policy, education and public engagement with regard to Earth jurisprudence and with the increasing number of public declarations, statements and calls to restore a respectful relationship with the Earth.

105. The expanding Harmony with Nature Knowledge Network, which consists of expert practitioners, thinkers and academics, is encouraged to continue to advance the implementation of sustainable living in harmony with nature and to develop communities of practice across a range of disciplines, from the natural and social sciences, physics, chemistry, biology, ecology, economics, sociology, law, ethics, spirituality and anthropology to medicine and linguistics.

106. They are further encouraged to carry out a baseline review and the compilation of existing and emerging legal precedents, public and government declarations and calls for a universal declaration of the rights of Mother Earth, which could establish guiding principles and common positions for Member States to initiate a global conversation on the subject.

107. Finally, the approaches and actions being taken by Member States, civil society groups and other stakeholders to foster sustainable living in harmony with nature will continue to be showcased and supported through the Harmony with Nature website (www.harmonywithnatureun.org).